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# THE CONSEQUENCES OF FALSE CONFESSIONS: DEPRIVATIONS OF LIBERTY AND MISCARRIAGES OF JUSTICE IN THE AGE OF PSYCHOLOGICAL INTERROGATION\*

RICHARD A. LEO\*\* AND RICHARD J. OFSHE\*\*\*

## I. INTRODUCTION

### A. DEFINING THE PROBLEM

Because a confession is universally treated as damning and compelling evidence of guilt,<sup>1</sup> it is likely to dominate all other case evidence and lead a trier of fact to convict the defendant.<sup>2</sup> A false confession is therefore an exceptionally dangerous piece of evidence to put before anyone adjudicating a case. In a criminal justice system whose formal rules are designed to minimize the frequency of unwarranted arrest, unjustified prosecution, and wrongful conviction, police-induced false confessions rank amongst the most fateful of all official errors.

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<sup>1</sup> See Saul M. Kassir & Lawrence S. Wrightsman, *Confession Evidence*, in THE PSYCHOLOGY OF CONFESSION EVIDENCE & TRIAL PROCEDURE 67, 67-68 (SAUL M. KASSIR & LAWRENCE S. WRIGHTSMAN eds., 1985) [hereinafter Kassir & Wrightsman, *Confession Evidence*]; 3 JOHN HENRY WIGMORE, WIGMORE ON EVIDENCE § 815 (1972); DAVID SIMON, HOMICIDE: A YEAR ON THE KILLING STREETS (1991); Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 298 (1996) [hereinafter Leo, *Inside the Interrogation Room*].

<sup>2</sup> See Kassir & Wrightsman, *Confession Evidence*, *supra* note 1, at 67; Saul M. Kassir & Lawrence S. Wrightsman, *Coerced Confessions, Judicial Instructions, and Mock Juror Verdicts*, 11 J. OF APPLIED SOCIAL PSYCHOLOGY 489, 489 (1981) [hereinafter Kassir & Wrightsman, *Coerced Confessions*]; Saul M. Kassir & Lawrence S. Wrightsman, *Prior Confessions and Mock Juror Verdicts*, 10 J. OF APPLIED SOCIAL PSYCHOLOGY 133, 133 (1980) [hereinafter Kassir & Wrightsman, *Prior Confessions*].

As many investigators have recognized, the problems caused by police-induced false confessions are significant, recurrent, and deeply troubling.<sup>3</sup> Police elicit false confessions so frequently that social science researchers, legal scholars, and journalists have discovered and documented numerous case examples in this decade alone.<sup>4</sup>

<sup>3</sup> See DONALD S. CONNERY, *CONVICTING THE INNOCENT: THE STRUGGLE OF A MURDER, A FALSE CONFESSION, AND THE STRUGGLE TO FREE A "WRONG MAN"* ix-xii (1996); C. RONALD HUFF ET AL., *CONVICTED BUT INNOCENT: WRONGFUL CONVICTION AND PUBLIC POLICY* xxi-xxiii (1996); LAWRENCE S. WRIGHTSMAN & SAUL M. KASSIN, *CONFESSIONS IN THE COURTROOM* 2-3 (1993); GISLI GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS, CONFESSIONS AND TESTIMONY* (1992); MARTIN YANT, *PRESUMED GUILTY: WHEN INNOCENT PEOPLE ARE WRONGLY CONVICTED* 11-14 (1991); ROBERT PERSKE, *UNEQUAL JUSTICE* 11-12 (1991); JEROME FRANK & BARBARA FRANK, *NOT GUILTY* (1957); EDWARD RADIN, *THE INNOCENTS* 11-12 (1964); EDWIN M. BORCHARD, *CONVICTING THE INNOCENT: ERRORS OF CRIMINAL JUSTICE* vii (1932); NATIONAL COMM'N ON LAW OBSERVANCE AND ENFORCEMENT, *REPORT ON LAWLESSNESS IN LAW ENFORCEMENT* 11 (1931) [hereinafter *THE WICKERSHAM COMM'N REPORT*]; Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. REV. 105, 109 (1997); Kassin & Wrightsman, *Confession Evidence*, *supra* note 1, at 68; Hugo Adam Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 STAN. L. REV. 21, 22 (1987).

<sup>4</sup> See EDWARD CONNORS ET AL., *CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL* (1996); HUFF ET AL., *supra* note 3; CONNERY, *supra* note 3; ROGER PARLOFF, *TRIPLE JEOPARDY: A STORY OF LAW AT ITS BEST—AND WORST* (1996); KEVIN DAVIS, *THE WRONG MAN: A TRUE STORY* (1996); JIM FISHER, *FALL GUYS: FALSE CONFESSIONS AND THE POLITICS OF MURDER* (1996); PAUL MONES, *STALKING JUSTICE* (1995); STEVEN LINSKOTT, *MAXIMUM SECURITY* (1994); GUDJONSSON, *supra* note 3; YANT, *supra* note 3; ROBERT MAYER, *THE DREAMS OF ADA* (1991); PERSKE, *supra* note 3.

See also Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997) [hereinafter Ofshe & Leo, *The Decision to Confess Falsely*]; Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 STUD. IN L., POL., & SOC'Y 189 (1997) [hereinafter Ofshe & Leo, *Social Psychology*]; Gail Johnson, *False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719 (1997); Saul M. Kassin, *The Psychology of Confession Evidence*, 52 AM. PSYCHOL. 221 (1997); White, *supra* note 3; Michael Radelet et al., *Prisoners Released From Death Rows Since 1970 Because of Doubts About Their Guilt*, 13 T.M. COOLEY L. REV. 907 (1996); T.N. Thomas, *Polygraphy and Coerced-Compliant False Confession: Serviceman E' Redevivus*, 35 SCI. & JUST. 133 (1995); Mickey McMahon, *False Confessions and Police Deception: The Interrogation, Incarceration and Release of An Innocent Veteran*, 13 AM. J. FORENSIC PSYCHOL. 5 (1995); Paul Hourihan, *Earl Washington's Confession: Mental Retardation and the Law of Confessions*, 81 VA. L. REV. 1471 (1995); Wrightsman & Kassin, *Confessions in the Courtroom*, *supra* note 3; Richard J. Ofshe, *Inadvertent Hypnosis During Interrogation*, 40 INT'L J. CLINICAL & EXPERIMENTAL HYPNOSIS 125 (1992) [hereinafter Ofshe, *Inadvertent Hypnosis*].

See generally *Lack of Evidence Leads to Sitka Murder Acquittal*, ANCHORAGE DAILY NEWS, June 25, 1997, at B4 [hereinafter *Lack of Evidence*]; Tom Held, *Justice Gets 2nd Chance in Murder Case: Victims' Son Wants Fair Trial, No Death Penalty Threat for Accused Outlaws*, MILWAUKEE J. & SENTINEL, June 12, 1997, at 1; Bryan Smith, *Suspects' Confessions May Hide Truth*, OREGONIAN, Feb. 23, 1997, at D1; Bob Herbert, *Prosecutor's Prize*, N.Y. TIMES, Jan. 29, 1996, at A5; Mike Folks, *Man Charged With Murder Released; Fingerprints Didn't Match Ones Found at Scene*, FT. LAUDERDALE SUN-SENTINEL, Oct. 12, 1996, at B1;

Yet no one knows precisely how often false confessions occur in the United States, how frequently false confessions lead to wrongful convictions, or how much personal and social harm false confessions cause. This is because: (1) no organization collects statistics on the annual number of interrogations and confessions or evaluates the reliability of confession statements; (2) most interrogations leading to disputed confessions are not recorded; and (3) the ground truth (what really happened) may remain in genuine dispute even after a defendant has pled

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Barry Siegel, *A Question of Guilt When Taunja Bennett was Killed in 1990; Portland, Oregon Prosecutor Jim McIntyre Thought He Had a Rock-Solid Case Against Laverne Pavlinac and John Sosnovske; Then Someone Started Writing Anonymous Letters Claiming Credit for the Murder*, L.A. TIMES, Sept. 1, 1996 (Magazine), at 15 [hereinafter Siegel, *A Question of Guilt*]; Mark Sauer, *Some Strange Cases Examined of Innocents Who Confess to Murder*, SAN DIEGO UNION & TRIB., July 27, 1996, at B10; John Holland, *Break Killing Suspect Cleared: Shoup Among 4 Held in Canadian's Death*, DAYTONA NEWS J., July 31, 1996, at 1A; William Booher, *Wrongly Imprisoned Man Will Get \$605,000, New Castle, Henry County and State Must Pay for 18 Months Behind Bars*, INDIANAPOLIS STAR, Mar. 21, 1995, at C1; Robert P. Sigman, *The Tragedy of False Confessions*, KAN. CITY STAR, June 19, 1995, at B4; Marc Perrusquia, *"Confessor" to Murder Says He Was Coerced*, COMM. APPEAL, Jan. 16, 1995, at A1; Joseph P. Shapiro, *Innocent, But Behind Bars; Another Man Confessed to Murder; Why is this Retarded Man in Prison?*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 36; Michael Granberry, *Charges Dropped in Laguna Arson When "Confession" Is Proved Bogus; Courts: O.C. Prosecutors Admit They Were Duped, Verify Suspect Was in Mexican Jail During Last Year's Firestorm*, L.A. TIMES, Oct. 6, 1994, at A1; Joe Darby, *Prosecutors Reject Murder Confession*, NEW ORLEANS TIMES-PICAYUNE, Feb. 4, 1994, at B2; June Arney, *Joseph M. Giaratano; Bloody Boot Prints Led Him To Doubt His Own Confession*, VIRGINIAN-PILOT & THE LEDGER STAR, June 26, 1994, at A1; Glen Chase, *Expert Picks at Confession Says Errors Suggests Misskelley Lied*, ARK. DEMOCRAT-GAZETTE, Feb. 2, 1994, at 1A; Ginny Carroll, *True Confessions—Or False?; In 1982 a New Mexico Man Said He Killed a Priest; Now, There's Strong Evidence He Didn't*, NEWSWEEK, Sept. 13, 1993, at 41; Pete Shellem, *Jailed Man Set Free After False Confession; Proof of Innocence Approved at Hearing*, HARRISBURG PATRIOT, Jan. 9, 1993, at A1 [hereinafter Shellem, *Jailed Man Set Free*]; David Rossmiller & Glen Creno, *City to Probe Police on False Confession; Mom's Other Sons Returned to Family*, PHOENIX GAZETTE, Mar. 31, 1993, at B4; Roger Parloff, *False Confessions: Standard Interrogations by Arizona Law Enforcement Officials Led to Four Matching Confessions to the Murders of Nine People at a Buddhist Temple; But All Four Suspect Were Innocent*, AM. LAW., May 1993, at 58 [hereinafter Parloff, *False Confessions*]; Carlos V. Lozano, *Ex-Ranch Foreman Acquitted of Murder Despite a Confession Crime: A Jury Official Says the Prosecution Failed to Provide "Separate Evidence to Substantiate" the Charge Stemming from the 1988 Simi Valley Slaying*, L.A. TIMES, July 24, 1992, at B5; Carolyn Colwell, *Defense, DA: Scrap Murder Indictment*, NEWSDAY, May 1, 1991, at 23; Jolayne Houtz, *Murder Confessions False; Man Released*, SEATTLE TIMES, Apr. 23, 1991, at B1; Rob Warden, *Guilty Until Proven Innocent: The Criminal Justice System Does Not Protect the Innocent*, CHI. TIMES MAG. 34 (1990); Barry Siegel, *A Peek at Back Alley Justice*, L.A. TIMES, Aug. 16, 1990, at 1 [hereinafter Siegel, *A Peek at Back Alley Justice*]; Jim Phillips, *Man Who Said He Killed Friend Gets Probation for Scaring Her*, AUSTIN AM. STATESMAN, Nov. 9, 1990, at B3; Mark Paxton, *Nightmare of Confession Continues; Two Claimed Responsibility for Murders*, TULSA WORLD, Feb. 11, 1990, at C26; Jack Page, *A Question of Justice: A Father's Plea for Bradley Page*, EAST BAY EXPRESS, Oct. 12, 1990, at 1; Claire Cooper, *False Confessions Ring True Under Questioning, Suspects Fall Victim to Their Own Imaginations*, SACRAMENTO BEE, Jan. 7, 1990, at A1.

guilty or been convicted.<sup>5</sup> These problems prevent researchers from defining a universe of confession cases, sampling a subset, and confidently determining the truth or falsity of each underlying confession.

Until these methodological obstacles are overcome, no one can authoritatively estimate the rate of police-induced false confessions or the annual number of wrongful convictions caused by false confessions.<sup>6</sup> The lack of such information also prevents researchers from estimating the full magnitude of personal and social harm that police-induced false confessions cause: the days and months innocent persons spend in pre-trial incarceration; the resources, time, and dollars wasted prosecuting and defending them; the months and years defendants languish in prison after wrongful conviction; and the additional crimes carried out by the true perpetrators.

Although it is presently not possible to estimate the magnitude of harm caused by false confessions, this article sheds light on another dark corner of the problem by addressing the following questions: What is the impact of demonstrably unreliable confession evidence on criminal justice officials? What are the consequences of false confessions on defendants as they move through the criminal justice system? And how much influence does a false confession alone exert on the decision-making of jurors?

## B. FALSE CONFESSIONS AND THE ADMINISTRATION OF JUSTICE

Following Edwin Borchard's pioneering study of miscarriages of justice,<sup>7</sup> a series of investigators<sup>8</sup> have documented numerous cases of wrongful arrest and conviction of the innocent in the United States.<sup>9</sup> We continue the tradition of re-

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<sup>5</sup> See, e.g., MONES, *supra* note 4; MAYER, *supra* note 4; TERRY J. GANEY, *ST. JOSEPH'S CHILDREN: A TRUE STORY OF TERROR AND JUSTICE* (1989).

<sup>6</sup> In their study of 350 miscarriages of justice in capital (and potentially capital) cases in the twentieth century, Bedau and Radelet identified false confession as the leading cause of wrongful convictions attributable to police misconduct. Of the cases they studied, 14% resulted from coerced or persuaded false confessions. See Bedau & Radelet, *supra* note 3, at 58.

<sup>7</sup> BORCHARD, *supra* note 3.

<sup>8</sup> See, e.g., HUFF ET AL., *supra* note 3; YANT, *supra* note 3; RADIN, *supra* note 3; FRANK & FRANK, *supra* note 3; Radelet et al., *supra* note 4.

<sup>9</sup> The leading contemporary research in this tradition is Bedau and Radelet's landmark study of miscarriages of justice. See Bedau & Radelet, *supra* note 3; see also MICHAEL L. RADELET ET AL., *IN SPITE OF INNOCENCE: ERRONEOUS CONVICTIONS IN CAPITAL CASES* (1992). In total, they identified 416 cases since 1900 in which innocent

search into errors in the criminal justice system by reporting a study of sixty cases of police-induced false confessions in the post-*Miranda* era,<sup>10</sup> and by analyzing the consequences of these

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defendants were wrongfully convicted of capital or potentially capital crimes. *Id.* at ix-x. Recognizing that miscarriages of justice are caused by a wide variety of factors, Bedau and Radelet identified the four main sources of wrongful conviction: (1) police error prior to trial; (2) prosecutorial error before or during trial; (3) witness error during depositions or testimony; and (4) miscellaneous types of system error. Though no one knows the magnitude of harm caused by wrongful convictions or the number of innocent individuals wrongfully executed in this century, Bedau and Radelet's research persuasively demonstrates that "our criminal justice system is fallible and the gravest possible errors in its administration can be documented." Bedau & Radelet, *supra* note 3, at 46.

<sup>10</sup> In little more than a half century, American interrogation practices have undergone a remarkable change. See generally Richard A. Leo, *From Coercion to Deception: The Changing Nature of Police Interrogation in America*, 18 CRIME, L. & SOC. CHANGE 35 (1992) [hereinafter Leo, *From Coercion to Deception*]. Throughout the first third of the twentieth century, police regularly resorted to physical force and duress to extract confessions. See WICKERSHAM COMM'N REPORT, *supra* note 3. Growing public revulsion toward *third degree* practices, the movement toward police professionalization, and Supreme Court decisions outlawing physical force during interrogation eventually led to a shift to psychological tactics. See *Brown v. Mississippi*, 297 U.S. 278 (1936); SAMUEL WALKER, A CRITICAL HISTORY OF POLICE REFORM: THE EMERGENCE OF PROFESSIONALISM 132-34 (1977); ERNEST JEROME HOPKINS, OUR LAWLESS POLICE: A STUDY OF THE UNLAWFUL ENFORCEMENT OF THE LAW 3-14 (1931); EMMANUEL LAVINE, THE THIRD DEGREE: A DETAILED AND APPALLING EXPOSE OF POLICE BRUTALITY 3-9 (1930). Though American interrogation methods became far less assaultive during the 1940s and 1950s, psychologically coercive practices flourished and police continued to elicit involuntary and unreliable confessions. See Richard A. Leo, *Police Interrogation in America: A Study of Violence, Civility and Social Change* 53-65 (Ph.D. dissertation, Univ. of Calif. at Berkeley 1994) (on file with author) [hereinafter Leo, *Police Interrogation in America*].

In response, the Supreme Court turned its attention from constitutional questions raised by physical coercion to the problems raised by psychologically oriented interrogation practices. In a series of decisions between 1940 and 1963, the Court analyzed the conditions under which psychological methods produce involuntary confessions. See, e.g., *Haynes v. Washington*, 373 U.S. 503 (1963); *Lynumn v. Illinois*, 372 U.S. 528 (1963); *Culombe v. Connecticut*, 367 U.S. 568 (1961); *Rogers v. Richmond*, 365 U.S. 534 (1961); *Spano v. New York*, 360 U.S. 315 (1959); *Fikes v. Alabama*, 352 U.S. 191 (1957); *Leyra v. Denno*, 347 U.S. 556 (1954); *Watts v. Indiana*, 338 U.S. 49 (1949); *Malinski v. New York*, 324 U.S. 401 (1945); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944); *Chambers v. Florida*, 309 U.S. 227 (1940).

In 1966, in *Miranda v. Arizona*, the Supreme Court directly addressed the policy problem of psychologically-based methods by mandating that police issue a set of code-like constitutional warnings and elicit a waiver from suspects prior to custodial questioning. 384 U.S. 436 (1966). The fourfold *Miranda* warnings informed suspects of their constitutional right to refuse and/or terminate custodial questioning, and thereby avoid and/or escape the potentially coercive pressures the Warren Court believed to be present in modern methods of interrogation. *Id.* at 467. Unable to observe directly what happened in interrogation rooms, the Court turned to police training manuals to assess methods of psychological interrogation and concluded that some of these methods were heavy-handed and oppressive. *Id.* at 448-55. While the *Miranda* Court acknowledged that no single tactic was likely to overbear a suspect's will, the Court recognized that these methods, if used together, could easily overcome



errors affecting defendants as they move through the criminal justice system.<sup>11</sup>

We suggest that confessions are regarded as the most damning and persuasive evidence of guilt simply because most suspects who confess are guilty, and because most confessions are corroborated by additional evidence. Under these conditions, however, it is impossible to isolate the effect of the defendant's "I did it" admission<sup>12</sup> on the decision-making of criminal justice officials and juries because the confession co-varies with inculpatory witness or physical evidence. The research reported here isolates the effect of a defendant's "I did it" statement on the decision-making of criminal justice officials and juries by studying only cases in which the defendant's confession is not supported by any physical or reliable inculpatory evidence. The research design thus allows measurement of the effect of an untrue admission when a detective, prosecutor, judge or jury is required to weigh the admission against evidence that would ordinarily establish the defendant's innocence.

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a suspect's ability to resist an interrogator's demand for confession and result in an involuntary confession. *Id.*

*Miranda* marked the end of *third degree* interrogations and the establishment of a new era of psychological interrogation techniques and strategies. Even though interrogation practices today are psychologically-oriented, American police sometimes resort to *third degree* methods. See *20/20: Confession at Gunpoint?* (ABC News Television Broadcast, Mar. 29, 1991) [hereinafter *Confession at Gunpoint?*]. While the *Miranda* Court noted that police still resorted to violent interrogation methods on occasion, it recognized that American interrogation tactics had become almost entirely psychological in nature. *Miranda*, 384 U.S. at 448. Recognizing that psychological interrogation methods can produce both involuntary and unreliable confessions, the Court created a bright line rule to more clearly and more effectively regulate the admissibility of psychologically-induced confession statements. See *id.* at 448-55.

In the 31 years since *Miranda*, American police have developed, extended, and refined psychological methods of interrogation. As a consequence, interrogation practices have become increasingly subtle and sophisticated. Leo, *From Coercion to Deception*, *supra*, at 36-37. Interrogators may have become more effective at obtaining confession statements than they were in the prior era of *third degree* interrogation. See *id.* With contemporary psychological methods, police now routinely elicit true confessions from the guilty without resorting to physical or psychological coercion; sometimes coerce false confessions from the innocent without resorting to force; and, less commonly, elicit false confessions from the factually innocent by persuading them they committed crimes about which they have no recollection. See generally Ofshe & Leo, *The Decision to Confess Falsely*, *supra* note 4.

<sup>11</sup> See Ofshe & Leo, *Social Psychology*, *supra* note 4, at 191-94.

<sup>12</sup> For analytic purposes we distinguish between an admission ("I did it") and a confession. The post-admission narrative is the statement the suspect gives to police after making the "I did it" admission. A confession is a full description of a person's participation in a crime.

This article explores whether contemporary American psychological interrogation practices continue to induce false confessions like the *third degree* methods that preceded them. This article also analyzes how likely police-induced false confessions are to lead to the wrongful arrest, prosecution, conviction, and incarceration of the innocent. And this article examines with field data<sup>13</sup> whether confession evidence substantially biases a trier of fact even when the defendant's statement was elicited by coercive methods.<sup>14</sup> We explore this issue with cases in which the defendant's statement has not only been coerced but is also demonstrably unreliable, and in which other evidence proves or strongly supports the defendant's innocence.

Part II of this article discusses the selection and classification of the sixty disputed confession cases under study.<sup>15</sup> Part III describes the findings of our research. Part IV analyzes the deprivations of liberty and miscarriages of justice associated with the sixty cases described in this article. Finally, Part V discusses the import of this research and offers some concluding remarks.

## II. METHOD

### A. SELECTION AND CLASSIFICATION

Cases of disputed confessions were identified through multiple sources: electronic media database searches; directly from case files;<sup>16</sup> and from secondary sources. The sixty cases dis-

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<sup>13</sup> See Kassir & Wrightsman, *Coerced Confessions*, *supra* note 2, at 492-504; Kassir & Wrightsman, *Prior Confessions*, *supra* note 2, at 136-45.

<sup>14</sup> Kassir, *supra* note 4, at 221.

<sup>15</sup> Due to the difficulty of directly obtaining case materials—especially in lesser known cases—all social science and legal research on miscarriage of justice relies on both primary and secondary source materials. See, e.g., YANT, *supra* note 3; HUFF ET AL., *supra* note 3; Bedau & Radelet, *supra* note 3. The research reported here is no different. By necessity, we rely on a variety of sources to document our assertions of fact. Where possible, we have tried to draw directly on interviews, police transcripts, and trial records, but in many instances we were only able to obtain newspaper and magazine accounts, appellate court opinions, academic journal articles, and/or books.

<sup>16</sup> The authors obtained case file materials (either substantial or selected portions) directly from the attorney(s) representing the confessor in 17 cases (nos. 2, 3, 16, 17, 18, 21, 28, 34, 35, 40, 43, 45, 46, 47, 49, 50, 58). See *infra* Part II.D (describing and numbering the cases studied in this article). The confessors' attorneys typically requested consultation at a suppression hearing and/or criminal trial, during the post-conviction appeal, or in a civil proceeding following the termination of criminal charges. In one case, a governor requested consultation in connection with a pardon under consideration.



cussed below do not constitute a statistically adequate sample of false confession cases. Rather they were selected because they share a single characteristic: an individual was arrested primarily because police obtained an inculpatory statement that later turned out to be a proven, or highly likely, false confession.

Based on the information that we obtained and reviewed, all of the cases studied satisfy the following conditions: no physical or other significant and credible evidence indicated the suspect's guilt;<sup>17</sup> the state's evidence consisted of little or nothing more than the suspect's statement "I did it;" and the suspect's factual innocence was supported by a variable amount of evidence—often substantial and compelling—including exculpatory evidence from the suspect's post-admission narrative.<sup>18</sup> For every case included in this study, there was no credible evidence corroborating the defendant's "I did it" admission or supporting the conclusion that he was guilty.<sup>19</sup>

Based on the strength of the evidence indicating a defendant's probable innocence, each case was classified into one of three categories: proven false confession; highly probable false confession; or probable false confession.

For the thirty-four cases classified as *proven false* confessions, the confessor's innocence was established by at least one dispositive piece of independent evidence.<sup>20</sup> For example, a defendant's confession was classified as proven false if the murder victim turned up alive, the true perpetrator was caught and

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<sup>17</sup> In many of the cases identified in this paper, the suspect supposedly also confessed to so-called "jailhouse snitches"—at the same time that he was busy recanting his uncorroborated confession to everyone else. Because jailhouse snitches stand to gain material concessions and sentence reductions, we do not regard their testimony as credible. See REPORT OF THE 1989-90 LOS ANGELES COUNTY GRAND JURY, INVESTIGATION OF THE INVOLVEMENT OF JAIL HOUSE INFORMANTS IN THE CRIMINAL JUSTICE SYSTEM IN LOS ANGELES COUNTY (June 26, 1990); Clifford Zimmerman, *Toward A New Vision of Informants: A History of Abuses and Suggestions for Reform*, 22 HASTINGS CONST. L.Q. 81, 93-97 (1994); Mark Curriden, *No Honor Among Thieves*, 75 A.B.A. J. 52, 54-56 (1989).

<sup>18</sup> The defendant's post-admission narrative of the crime is the actual detailed confession statement that follows the "I did it" admission. See *infra* notes 26-29 and accompanying text. For a fuller discussion of the post-admission narrative, see Ofshe & Leo, *The Decision to Confess Falsely*, *supra* note 4, at 990-97.

<sup>19</sup> The amount of information on these cases varies. The analysis of some cases was based on access to virtually the entire case file, while the analysis of other cases was limited to journalists' accounts or published appellate court opinions. Based on the available sources, no credible evidence supporting the confessor's guilt was discovered in any of the cases reported in this article. Some investigations, however, involved questionable evidence that later proved to be unreliable.

<sup>20</sup> See *infra* text accompanying notes 34-88, 136-80.

proven guilty, or scientific evidence exonerated the defendant. Not only was the confessor definitively excluded by dispositive evidence, but the confession statement itself also lacked internal indicia of reliability. Any disputed confession case that fell short of this standard—no matter how questionable the confession and no matter how much direct or circumstantial evidence indicated the suspect was innocent—was excluded from this category.

For the eighteen cases classified as *highly probable* false confessions, the evidence overwhelmingly indicated that the defendant's confession statement was false.<sup>21</sup> In these cases, no credible independent evidence supported the conclusion that the confession was true. Rather, the physical or other significant independent evidence very strongly supported the conclusion that the confession is false. In each of these cases, the confession lacked internal reliability. Thus, the defendant's statement is classified as a highly probable false confession because the evidence led to the conclusion that his innocence was established *beyond a reasonable doubt*.

For the eight cases classified as *probable* false confessions,<sup>22</sup> no physical or other significant credible evidence supported the conclusion that the defendant was guilty. There was evidence supporting the conclusion that the confession was false, and the confession lacked internal indicia of reliability. Although the evidence of innocence in these cases was neither conclusive nor overwhelming, there were strong reasons—based on independent evidence—to believe that the confession was false. Cases are included in this category if the *preponderance of the evidence* indicated that the person who confessed was innocent.

We recognize that for any case that could not be classified as a proven false confession, there is a possibility that our classification of the case might be in error. Despite strong evidence supporting the conclusion that the confession is false, it remains theoretically possible that one or more of the defendants we classify as false confessors may have committed the crime. Nevertheless, we believe that the disputed confessions discussed in

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<sup>21</sup> See *infra* text accompanying notes 89-122, 181-305.

<sup>22</sup> See *infra* text accompanying notes 123-35, 306-61.

this article would be judged false by an overwhelming majority of neutral observers with access to the evidence we reviewed.<sup>23</sup>

#### B. POST-ADMISSION NARRATIVE ANALYSIS

When evaluating the likelihood that a person committed a crime, investigators should first consider witness statements, biological evidence linking the suspect to the crime (fingerprint, DNA, hair, etc.), and alibi evidence. The identification by an eyewitness, the identification of the person as the donor of one or more type of biological material found at the crime scene, and the lack of an alibi all point to guilt. By contrast, an opposite pattern of evidence (e.g., no match with eyewitness descriptions, exculpating biological evidence, and the existence of an unimpeachable alibi) all support innocence.

In addition to these traditional sources of evidence, the defendant's post-admission narrative of the crime may provide helpful evidence of guilt or innocence, assuming contamination<sup>24</sup> has been eliminated. If a suspect has made an "I did it" admission and given a post-admission narrative of a crime, the fit—or lack thereof—between the contents of the narrative and the crime scene facts provides evidence of guilt or innocence. Evaluation of the fit can reveal that a suspect possesses the sort of accurate, personal knowledge of the specifics of the crime that the perpetrator would be expected to have, or it can demonstrate the suspect's ignorance of the crime because his answers about the crime scene evidence are grossly incorrect.<sup>25</sup>

The fit between the specifics of a confession and the crime facts determines whether the "I did it" admission should be judged as reliable or unreliable evidence. There are at least three indicia of reliability that can be evaluated to reach a conclusion about the trustworthiness of a confession. Does the statement: (1) lead to the discovery of evidence unknown to the police? (e.g., location of a missing weapon that can be proven to have been used in the crime, location of missing loot that can

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<sup>23</sup> See also Bedau & Radelet, *supra* note 3, at 27-56, for a similar discussion of their method and classification of miscarriages of justice.

<sup>24</sup> Contamination is the process whereby police suggest facts to the suspect that he did not already know, or the suspect learns facts about the crime from newsmedia or information leaked, rumored or disseminated in the community.

<sup>25</sup> For an in-depth discussion of the fit between the post-admission narrative and the crime scene facts, see Ofshe & Leo, *The Decision to Confess Falsely*, *supra* note 4, at 990-97.

be proven to have been taken from the crime scene, etc.); (2) include identification of highly unusual elements of the crime that have not been made public? (e.g., an unlikely method of killing, mutilation of a certain type, use of a particular device to silence the victim, etc.); or (3) include an accurate description of the mundane details of the crime scene which are not easily guessed and have not been reported publicly? (e.g., how the victim was clothed, disarray of certain furniture pieces, presence or absence of particular objects at the crime scene, etc.).

If, for example, a suspect's post-admission narrative either leads the police to missing evidence, or reveals that the suspect knew precisely how the victim was bound and mutilated, or which window was jimmied open with what sort of unlikely tool, then the suspect possesses actual knowledge of the crime that would reasonably be expected of the perpetrator. Therefore, the suspect's confession should be deemed reliable. If, on the other hand, the suspect is unable to provide police with accurate information revealing evidence not already known to them (e.g., where to locate the murder weapon or the loot), is demonstrably wrong about the method of killing, or is demonstrably inaccurate about the specifics of the crime scene, then the statement should be judged unreliable and, if anything, treated as evidence of innocence. Therefore, the statement should be seen as lacking evidence of actual knowledge—something to be expected of a false confessor who has not been contaminated by the police or due to leakage of information into the community.

When the police elicit a post-admission narrative from a suspect, they typically seek only information about major crime elements (e.g., location of the missing weapon, type of mutilation, etc.). However, a suspect's report about the mundane (but unique or improbable) details of the crime and the crime scene is of great value in establishing a suspect's guilt or innocence.<sup>26</sup> This is true, in part, because the suspect's knowledge of

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<sup>26</sup> For example, the answer to a question about whether a body was face up or face down has little value since a guess will be correct half the time. Correctly describing how the victim was bound, however, has more value since there are a large number of possibilities. Finally, assuming there is no contamination, if a defendant's post-admission narrative correctly describes a bedroom crime scene in which the sheet—but not the mattress cover—was stripped off the bed, one panel of a window drape was torn down, and a table lamp was found on the floor in the northeast corner of the room, he has proven his actual knowledge of the crime by accurately describing unusually mundane details of the scene.

mundane details is less likely to be the result of contamination by the police. Mundane details are less likely to have been mentioned during off-tape conversations or during the pre-admission phase of an unrecorded interrogation.

A suspect's post-admission narrative need not demonstrate indicia of reliability in each category for it to reveal personal knowledge of the crime. It is generally accepted that one or more aspects of a crime may be so heinous that a guilty party may refuse to state them even while admitting to other major components of the crime. For example, Richard Allen Davis, who admitted to kidnapping and killing a child, was not willing to admit that he also raped her.<sup>27</sup> Nevertheless, if a defendant has been properly and thoroughly debriefed, his personal knowledge of the crime should allow him to supply sufficiently detailed information to prove a confession's reliability by demonstrating his specific knowledge of what happened (e.g., the circumstances of the kidnapping, the child's clothing, the location of the killing ground, the description of the killing scene, etc.), even if he resists confessing to certain particularly heinous acts.

### C. POLICE-INDUCED FALSE CONFESSION

Police-induced false confessions arise when a suspect's resistance to confession is broken down as a result of poor police practice, overzealousness, criminal misconduct and/or misdirected training.<sup>28</sup> Interrogators sometimes become so committed to closing a case that they improperly use psychological interrogation techniques to coerce or persuade a suspect into giving a statement that allows the interrogator to make an arrest. Sometimes police become so certain of the suspect's guilt that they refuse to even-handedly evaluate new evidence or to consider the possibility that a suspect may be innocent, even when all the case evidence has been gathered and overwhelmingly demonstrates that the confession is false. Once a confession is obtained, investigation often ceases, and convicting the

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<sup>27</sup> See Michael Dougan, *Polly Klaas Case Marked Participants' Lives Forever; A Year After Killer Was Sentenced, Memories of Crime, Trial Remain Fresh*, S.F. EXAMINER, Sept. 26, 1997, at A4.

<sup>28</sup> See Ofshe & Leo, *The Decision to Confess Falsely*, *supra* note 4, at 986-88, 1088-106, 1114-22; Ofshe & Leo, *Social Psychology*, *supra* note 4, at 191-93, 206-07; GUDJONSSON, *supra* note 3, at 47-49, 232-33; Kassin & Wrightsman, *Confession Evidence*, *supra* note 1, at 72-76.

defendant becomes the only goal of both investigators and prosecutors. As the investigative process progresses, some interrogators, who overstepped procedural boundaries to obtain a false confession, engage in criminal conduct to cover up their procedural violations (e.g., coerce false witness statements, suborn perjured testimony from snitches, or perjure themselves at suppression hearings or at trial). Furthermore, some prosecutors who are determined to convict obstruct justice by withholding exculpatory evidence from the defense.<sup>29</sup>

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<sup>29</sup> For example, an Illinois special prosecutor recently indicted four DuPage County deputy sheriffs and three former DuPage County prosecutors for conspiracy, perjury and obstruction of justice in the wrongful capital convictions of Rolando Cruz and Alejandro Hernandez. See Don Terry, *Ex-Prosecutors and Deputies in Death Row Case are Charged with Framing Defendant*, N.Y. TIMES, Dec. 13, 1996, at A18. In 1983, DuPage County sheriffs allegedly elicited incriminating statements from Alejandro Hernandez and a "dream-vision" confession from Rolando Cruz to the residential burglary, kidnapping, rape and murder of 10-year-old Jeanine Nicarico. See *People v. Cruz*, 643 N.E.2d 636, 641 (Ill. 1994). Prosecutors charged Hernandez, Cruz and Stephen Buckley (who had been implicated by Hernandez's statements) with the capital crime. See *Buckley v. Fitzsimmons*, 919 F.2d 1230 (7th Cir. 1990); *People v. Cruz*, 521 N.E.2d 18 (Ill. 1988); *People v. Hernandez*, 521 N.E.2d 25 (Ill. 1988). Sheriffs recovered several forms of evidence from the scene of the crime and the victim's body (e.g., blood, handprints, shoeprints, seminal fluid), but could not link any physical evidence to these three suspects. See *Cruz*, 643 N.E.2d at 643-44; see also *American Justice, Presumed Guilty* (A&E Television Broadcast, Apr. 16, 1997) [hereinafter A&E, *Presumed Guilty*]; *After 2 Death Sentences, Man Acquitted in 3rd Trial; Courts: Defendant Had Been Imprisoned for 11 Years After Illinois Girl's Murder; No Physical Evidence of Eyewitnesses Linked Him to the Killing*, L.A. TIMES, Nov. 4, 1995, at A27. At the same time, prosecutors failed to provide defense counsel with exculpatory evidence. A&E, *Presumed Guilty*, *supra*.

For example, one month prior to trial, Buckley's attorney fortuitously discovered that the County Crime Lab had ruled out Buckley's boots—the primary and only evidence against him—as a match with the boots that had kicked in the Nicarico's door. A&E, *Presumed Guilty*, *supra*. Yet the sheriffs had retrieved Buckley's boots from the lab and instructed the laboratory technician not to file a report, causing the County Crime Laboratory Director to resign. Eventually, the FBI conclusively demonstrated that the killer's footprint left on the Nicarico door did not come from Buckley. *Id.* Sheriff's Detective John Sam also resigned in protest because of his belief that all three defendants were innocent. See Allan Gray & Courtney Edelhart, *Judge Rules Cruz Innocent; Finally "The Whole Case Just Fell Apart,"* CHI. TRIB., Nov. 4, 1995, at 1; Editorial, *Injustice in Illinois*, CHRISTIAN SCI. MONITOR, Oct. 26, 1995, at 20.

With no evidence against Cruz, Hernandez or Buckley, prosecutors relied on a parade of witnesses to whom they had given reward money or reduced sentences for perjured testimony that Cruz had made self-incriminating statements. See *Hernandez*, 521 N.E.2d at 30-31; Gera-Lind Kolarik, *DNA, Changed Testimony Gain Acquittal: Special Prosecutor, FBI Investigation Controversial Illinois Murder Prosecution*, 82 A.B.A. J. 34 (1996). In addition, in 1985, only four days before the trial, prosecutors announced for the first time that sheriff's detectives Dennis Kurzawa and Thomas Vosburgh had elicited a "dream-vision" statement from Hernandez a year and a half earlier in May, 1983, in which Cruz had reported details only known by the police and the true perpetrator. See *Cruz*, 521 N.E.2d at 19; Kolarik, *supra*. Police and prosecutors claimed the "dream-vision" statement was tantamount to a confession. A&E, *Presumed Guilty*, *supra*. Yet sheriff's detectives Kurzawa and Vosburgh had not tape-recorded Cruz's alleged "dream-vision" statement, they had not written a report about it at the time it



had allegedly been given, and, perhaps most curiously, they had not followed-up on this key piece of evidence the next day in a recorded interview with Cruz. *Id.* In addition, Deputy John Sam, who had worked alongside Kurzawa and Vosburgh on the Nicarico investigation before resigning in protest, had never heard any mention of Cruz's "dream-vision" statement during that time. See Cruz, 643 N.E.2d at 641; Gray & Edelhart, *supra*, at 1.

Nevertheless, Kurzawa and Vosburgh testified that they told their boss, Lieutenant James Montesano, about the "dream-vision" statement as proof that it had occurred, and Montesano corroborated their testimony in Court. See Cruz, 643 N.E.2d at 641-42; Jeffrey Bils, *Cops Unshaken On Cruz Vision*, CHI. TRIB., Oct. 28, 1995, at 1. Kurzawa and Vosburgh also testified that former Assistant State's Attorney Thomas Knight had told them not to document the dream-vision statement because he would use it in his summary before the grand jury, though, curiously, Knight had not questioned Cruz about the "dream-vision" statement in grand jury proceedings. See Cruz, 643 N.E.2d at 642; Bils, *supra*, at 1. The jury convicted Cruz and Hernandez of the capital crimes, and the judge sentenced both men to die by lethal injection. Cruz, 521 N.E.2d at 18-19; Hernandez, 521 N.E.2d at 26; A&E, *Presumed Guilty*, *supra*. The jury could not reach a decision on the charges against Buckley, and eventually prosecutors dismissed charges against him. See Cruz, 521 N.E.2d at 19; Terry, *supra*, at A18; A&E, *Presumed Guilty*, *supra*.

Shortly after Cruz's and Hernandez's capital convictions in 1985, Brian Dugan, a convicted child-rapist and murder, confessed that he alone had raped and killed Jeanine Nicarico. Terry, *supra*. There was considerable evidence implicating Dugan. See Cruz, 643 N.E.2d at 644-52; James Touhy, *The DuPage Cover-Up: The Authorities Know That Brian Dugan Killed Jeanine Nicarico; They Know They've Put the Wrong Men on Death Row; They Don't Care*, CHI. LAWYER, May 1996, at 9; A&E, *Presumed Guilty*, *supra*. First, Dugan had also raped and killed seven-year-old Melissa Ackerman and 27-year-old Donna Schnor, both with the same *modus operandi* as the perpetrator of the Nicarico crime—abducting the victim, taking her to a remote nature cite, raping and sodomizing her, and then killing her. See Cruz, 643 N.E.2d at 644-52; Touhy, *supra*; A&E, *Presumed Guilty*, *supra*. Second, eyewitnesses placed Dugan in the Nicarico neighborhood on the day of the abduction. See Cruz, 643 N.E.2d at 648; Touhy, *supra*; A&E, *Presumed Guilty*, *supra*. Third, Dugan knew many of the crime details that had not been made public. See Cruz, 643 N.E.2d at 647; Touhy, *supra*; A&E, *Presumed Guilty*, *supra*. Nevertheless, both police and prosecutors refused to accept the validity of Dugan's confession, insisting that Cruz and Hernandez were guilty. See Cruz, 643 N.E.2d at 644-52; Touhy, *supra*; A&E, *Presumed Guilty*, *supra*. Skeptical observers at the time insisted that prosecutors knew that Dugan had committed the crime but ignored his confession because they could not admit that they had sent two innocent men to death row. See Touhy, *supra*.

In 1988, the Illinois Supreme Court reversed the convictions against Cruz and Hernandez because the prosecution had deliberately misused both Hernandez's and Cruz's statements against one another. See Cruz, 521 N.E.2d at 23-24; Hernandez, 521 N.E.2d at 33-35. Based on his alleged "dream-vision" statement and the perjured testimony of numerous questionable witnesses, Cruz was convicted again at his second trial in 1990 of abducting, raping and murdering Nicarico, and sentenced to die by lethal injection. Cruz, 643 N.E.2d at 639; A&E, *Presumed Guilty*, *supra*. Hernandez's second trial ended in a hung jury, but at his third trial in 1991 he was convicted and sentenced to 80 years in prison. Jeffrey Bils & Maurice Possley, *Judge Rules Cruz Innocent; Nicarico Case Still Open After 12 Years*, CHI. TRIB., Nov. 4, 1995, at 1; A&E, *Presumed Guilty*, *supra*. Illinois State's Attorney Mary Kenney, who had been assigned to defeat Cruz's death row appeal, concluded that both Cruz and Hernandez were innocent and pleaded with then-Illinois State Attorney Roland Burris to dismiss charges against both of them. Radelet et al., *supra* note 4, at 934; A&E, *Presumed Guilty*, *supra*. When Burris pressed forward, Kenney resigned in disgust. See Radelet et al., *supra* note 4, at 934; Terry, *supra*; A&E, *Presumed Guilty*, *supra*. Though the Illinois Supreme Court

American police are poorly trained about the dangers of interrogation and false confession. Rarely are police officers instructed in how to avoid eliciting confessions, how to understand what causes false confessions, or how to recognize the forms false confessions take or their distinguishing characteristics.<sup>30</sup> Instead, some interrogation manual writers and trainers persist in the unfounded belief that contemporary psychological methods will not cause the innocent to confess<sup>31</sup>—a fiction so thoroughly contradicted by all of the research on po-

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initially affirmed Cruz's and Hernandez's convictions in 1992, it vacated both convictions in 1994. See *Cruz*, 643 N.E.2d at 639.

In 1995 DNA exonerated Cruz, Hernandez and Buckley. See CONNORS ET AL., *supra* note 4, at 44-46. At the same time, DNA testing revealed that there was only a 3/100th of 1% chance (i.e., 3/10,000) that Brian Dugan was not the source of the semen found in Jeanine Nicarico's body. Ted Gregory & Peter Gorner, *Cruz Didn't Rape Nicarico, DNA Expert Says; But Prosecutors Not Moved by New Tests*, CHI. TRIB., Sept. 23, 1995, at 1. Undeterred by this exculpatory evidence, prosecutors in 1995 brought Cruz to trial and sought the death penalty for a third time. A&E, *Presumed Guilty, supra*. However, this time Lieutenant Montesano recanted his earlier sworn testimony that Detectives Kurzawa and Vosburgh had told him about Cruz's alleged "dream-vision" confession statement immediately after it had been obtained. Kolarik, *supra*. Admitting that he had lied under oath in his earlier testimony, Montesano testified that he had been in another state the day that Kurzawa and Vosburgh had supposedly phoned him and therefore could not have spoken to them about any "dream-vision" confession statement. Kolarik, *supra*. As a result, Judge Ronald Mehling immediately acquitted Cruz and sharply criticized police and prosecutors for their sloppy and unethical conduct, forcing prosecutors to dismiss charges against Hernandez, who had been awaiting his fourth trial. Bills & Possley, *supra*, at 1. Both Cruz and Hernandez had each spent nearly 12 years in prison. Cruz had spent 10 years on death row, and Hernandez had spent three years on death row. A&E, *Presumed Guilty, supra*.

In December 1996, an Illinois Special Prosecutor charged four DuPage County sheriffs (including Montesano, Kurzawa and Vosburgh) and three former DuPage County prosecutors (including Knight) with conspiring to withhold evidence and use of false testimony to frame an innocent man for murder. See Terry, *supra*.

<sup>30</sup> Police interrogation training courses and seminars (including the introductory and advanced courses put on by the Chicago-based firm Reid & Associates) rarely, if ever, even mention the subject of false confessions. Leo, *Police Interrogation in America, supra* note 10, at 67-127. American police interrogation training manuals also fail to advise police of the social psychology of false confessions or instruct them how to recognize when their tactics are leading an innocent suspect to falsely confess. In short, police text writers and interrogation trainers demonstrate a studied indifference to the extensive psychological literature on false confession. See, e.g., DAVID ZULAWSKI & DOUGLAS WICKLANDER, *PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION* (1993); FRED E. INBAU ET AL., *CRIMINAL INTERROGATION AND CONFESSIONS* (1986); Brian Jayne & Joseph Buckley, *Criminal Interrogation Techniques on Trial*, 64 SEC. MGT. (1992); John E. Reid & Assocs., *The Reid Technique: Interviewing and Interrogation* (1991) (unpublished course booklet, on file with authors) [hereinafter *The Reid Technique*]; John E. Reid & Assocs., *The Reid Technique of Specialized Interrogation Strategies* (1991) (unpublished course booklet, on file with authors) [hereinafter *Reid Specialized Interrogation*].

<sup>31</sup> See, e.g., INBAU ET AL., *supra* note 30, at 147; Jayne & Buckley, *supra* note 30, at 66.

lice interrogation<sup>32</sup> that it can be labeled a potentially deadly myth. This fiction perpetuates the commonly held belief that only torture can cause an innocent suspect to confess, and it allows some police to rationalize accepting coerced and demonstrably unreliable confession statements as true.<sup>33</sup>

D. FALSE CONFESSION CASES

The identification of the sixty cases examined and their classification into three categories of disputed confession cases (Proven, Highly Probable and Probable False Confessions) is reported below:

TABLE A1  
FIRST CATEGORY: PROVEN FALSE CONFESSIONS (N =34)

Case ID #	Confessor	Year	Source (s)
1	Anthony Atkinson	1990	Colwell; <sup>34</sup> Demoretsky <sup>35</sup>
2	Richard Bingham	1996	Associated Press <sup>36</sup>
3	Leo Bruce	1991	Kimball & Greenberg, <sup>37</sup> Parloff <sup>38</sup>
4	Lavale Burt	1985	Radelet et al., <sup>39</sup> Warden <sup>40</sup>

<sup>32</sup> See, e.g., GUDJONSSON, *supra* note 3; Ofshe & Leo, *Social Psychology*, *supra* note 4; Kassir, *supra* note 4.

<sup>33</sup> For example, Portland police detective Kent Perry, who elicited proven false murder confessions from both Rick Nieskens and Christopher Cole, stated that, “[s]hort of physical torture, there isn’t anything that’s going to get you to say that you did something like that when you didn’t.” See Smith, *supra* note 4, at D6. Commenting on Gary Gauger’s presumed false murder confession, Debra Glaser, a psychologist with the Los Angeles Police Department and supposed interrogation expert, stated that “no amount of badgering [would prompt the average, sober person to] admit to doing something that awful—or to admit to any crime.” Robert Becker & Andrew Martin, *Vicious Killer or Gentle Farmer?; Two Portraits Emerge of Gary Gauger*, CHI. TRIB., Apr. 18, 1995, at 1. Missouri Sheriff Doug Seneker, who elicited Johnny Lee Wilson’s proven false confession, echoes this sentiment: “There is a principle in interrogation. A person will not admit to something they haven’t done, short of torture or extreme duress. No matter how long you’re grilled, no matter how much you’re yelled at, you’re not going to admit to something you haven’t done.” PERSKE, *supra* note 3, at 50.

<sup>34</sup> See Colwell, *supra* note 4, at 23.

<sup>35</sup> Tom Demoretsky, *Detectives in Murder Transferred; Three Confessions to Crime*, NEWSDAY, Oct. 24, 1991, at 7.

<sup>36</sup> *Lack of Evidence*, *supra* note 4, at B4. See also *Sitka Murder Suspect Sought Help, Police Say*, ANCHORAGE DAILY NEWS, June 13, 1997, at B7 [hereinafter *Sitka Murder*].

<sup>37</sup> Russ Kimball & Laura Greenberg, *Trials and Tribulations*, PHOENIX MAG., Dec. 1993, at 101 [hereinafter Kimball & Greenberg, *Trials and Tribulations*]; Russ Kimball & Laura Greenberg, *False Confessions*, PHOENIX MAG., Nov. 1993, at 85 [hereinafter Kimball & Greenberg, *False Confessions*]. See also Russ Kimball & Laura Greenberg, *Revelations From the Temple*, PHOENIX MAG., Oct. 1993, at 83 [hereinafter Kimball & Greenberg, *Revelations*].

<sup>38</sup> Parloff, *False Confessions*, *supra* note 4, at 58.

5	Christopher Cole	1995	Smith <sup>41</sup>
6	Bradley Cox	1980	Huff et al. <sup>42</sup>
7	Billy Gene Davis	1990	Phillips <sup>43</sup>
8	Pedro Delvillar	1987	Feldman; <sup>44</sup> Pristin <sup>45</sup>
9	Ralph Jacobs	1991	Booher <sup>46</sup>
10	William Kelley	1990	Shellem <sup>47</sup>
11	Guy Lewis	1994	Perrusquia <sup>48</sup>
12	Steven Linscott	1980	Connors et al.; <sup>49</sup> Linscott <sup>50</sup>
13	Jose Martinez	1993	Granberry <sup>51</sup>
14	Christina Mason	1993	Rossmiller; <sup>52</sup> Rossmiller & Creno <sup>53</sup>
15	Robert Moore	1996	Herbert; <sup>54</sup> Dwyer <sup>55</sup>
16	Rick Nieskins	1995	Smith <sup>56</sup>
17	Mark Nunez	1991	Kimball & Greenberg; <sup>57</sup> Parloff <sup>58</sup>
18	Dante Parker	1991	Ofshe & Leo; <sup>59</sup> Kimball & Greenberg <sup>60</sup>
19	George Parker	1980	Bedau & Radelet; <sup>61</sup> Nathan <sup>62</sup>
20	Laverne Pavlinac	1991	Siegel <sup>63</sup>
21	George Peterson	1990	McMahon; <sup>64</sup> Kimball & Greenberg <sup>65</sup>

<sup>39</sup> RADELET ET AL., *supra* note 9, at 292.

<sup>40</sup> Warden, *supra* note 4, at 34.

<sup>41</sup> Smith, *supra* note 4, at D1.

<sup>42</sup> HUFF ET AL., *supra* note 3, at 2. *See also* Cox v. State, 552 N.E.2d 970 (Ohio Ct. Cl. 1988).

<sup>43</sup> Phillips, *supra* note 4, at B3.

<sup>44</sup> Paul Feldman, *D.A. Won't Prosecute Detective Accused of Confession Coercion*, L.A. TIMES, Mar. 17, 1987, at B1.

<sup>45</sup> Terry Pristin, *Probe Begun Into Confessions of Two Aliens to Street Killings*, L.A. TIMES, Dec. 10, 1986, at B1.

<sup>46</sup> Booher, *supra* note 4, at C1. *See also* Thompson v. State, 671 N.E.2d 1165 (Ind. 1996); William Booher, *Beating Charges, Lawsuits Mounting for New Castle Police*, INDIANAPOLIS STAR, Feb. 6, 1994, at A1.

<sup>47</sup> Shellem, *supra* note 4, at A1.

<sup>48</sup> Perrusquia, *supra* note 4, at A1.

<sup>49</sup> CONNORS ET AL., *supra* note 4, at 65.

<sup>50</sup> LINSKOTT, *supra* note 4, at 76, 129, 139.

<sup>51</sup> Granberry, *supra* note 4, at A1.

<sup>52</sup> David Rossmiller, *Innocent or Not, Under Right Conditions "Everyone Will Confess,"* PHOENIX GAZETTE, Mar. 16, 1994, at A1.

<sup>53</sup> Rossmiller & Creno, *supra* note 4, at B4.

<sup>54</sup> Herbert, *supra* note 4, at A5.

<sup>55</sup> Jim Dwyer, *State's Unjust Blood Lust*, N.Y. DAILY NEWS, Jan. 30, 1996, at 6 [hereinafter Dwyer, *State's Unjust Blood Lust*]; Jim Dwyer, *Slay Confession is Full of Holes*, N.Y. DAILY NEWS, Jan. 28, 1996, at 8 [hereinafter Dwyer, *Slay Confession*].

<sup>56</sup> Smith, *supra* note 4, at D1.

<sup>57</sup> Kimball & Greenberg, *False Confessions*, *supra* note 37, at 85.

<sup>58</sup> Parloff, *False Confessions*, *supra* note 4, at 58.

<sup>59</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 226-31.

<sup>60</sup> Kimball & Greenberg, *False Confessions*, *supra* note 37, at 85.

<sup>61</sup> *See* Bedau & Radelet, *supra* note 3, at 150-51.

<sup>62</sup> David Nathan, *New Trial for Man Convicted of Murder*, UNITED PRESS INT'L, Feb. 4, 1986, at 1. *See also* State v. Parker, No. A-453-83T4 (N.J. Super. Ct. App. Div. Feb. 4, 1986).

<sup>63</sup> Siegel, *A Question of Guilt*, *supra* note 4, at 15.

<sup>64</sup> McMahon, *supra* note 4, at 5.

22	John Purvis	1983	Davis <sup>66</sup>
23	Paul Reggetz	1979	Yant; <sup>67</sup> Paxton <sup>68</sup>
24	Peter Reilly	1973	Connery; <sup>69</sup> Barthel <sup>70</sup>
25	Ivan Reliford	1986	UPI <sup>71</sup>
26	Melvin Reynolds	1979	Ganey; <sup>72</sup> Radelet et al. <sup>73</sup>
27	James Reyos	1982	Carroll; <sup>74</sup> Swindle <sup>75</sup>
28	Martin Salazar	1996	Ofshe & Leo; <sup>76</sup> Folks <sup>77</sup>
29	Donald Shoup	1996	Holland; <sup>78</sup> Murphy <sup>79</sup>
30	Christopher Smith	1991	Booher <sup>80</sup>
31	Ruben Trujillo	1987	Feldman; <sup>81</sup> Pristin <sup>82</sup>
32	David Vasquez	1984	Mones; <sup>83</sup> Douglas <sup>84</sup>
33	Earl Washington	1983	White; <sup>85</sup> Hourihan <sup>86</sup>
34	Johnny Lee Wilson	1986	Ofshe & Leo; <sup>87</sup> Shapiro <sup>88</sup>

<sup>65</sup> Kimball & Greenberg, *False Confessions*, *supra* note 37, at 85.

<sup>66</sup> Davis, *supra* note 4, at 265.

<sup>67</sup> YANT, *supra* note 3, at 90-91.

<sup>68</sup> Paxton, *supra* note 4, at C26.

<sup>69</sup> DONALD CONNERY, GUILTY UNTIL PROVEN INNOCENT 360-77 (1977).

<sup>70</sup> JOAN BARTHEL, A DEATH IN CANAAN 319-28 (1976). *See also* Reilly v. State, 355 A.2d 324 (Conn. Super. Ct. 1976).

<sup>71</sup> *Man Lied About Sex Killing; He Felt Safer in Jail*, SAN DIEGO UNION TRIB., Aug. 15, 1986, at 40.

<sup>72</sup> GANEY, *supra* note 5, at 201-03.

<sup>73</sup> RADELET ET AL., *supra* note 4, at 11.

<sup>74</sup> Carroll, *supra* note 4, at 41.

<sup>75</sup> Howard Swindle, *Shadows of a Doubt, Prosecutor, Bishop Believe Man Convicted in Priest's '81 Slaying is Not Guilty*, DALLAS MORNING NEWS, July 4, 1993, at 1A.

<sup>76</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 242 n.23.

<sup>77</sup> Folks, *supra* note 4, at B1.

<sup>78</sup> Holland, *supra* note 4, at 1A.

<sup>79</sup> Mary Murphy, *Donald Shoup: Killer or Victim?*, ORLANDO SENTINEL, May 26, 1996, at A1.

<sup>80</sup> Booher, *supra* note 4, at C01. *See also* Thompson v. State, 617 N.E.2d 1165 (Ind. 1996).

<sup>81</sup> Feldman, *supra* note 44, at B1.

<sup>82</sup> Pristin, *supra* note 45, at B1.

<sup>83</sup> MONES, *supra* note 4, at 296.

<sup>84</sup> JOHN DOUGLAS & MARK OLSHAKER, JOURNEY INTO DARKNESS 334-35 (1997).

<sup>85</sup> White, *supra* note 3, at 121-25.

<sup>86</sup> Hourihan, *supra* note 4, at 1471-72, 1494-501. *See also* Washington v. Murray, 4 F.3d 1285 (4th Cir. 1993).

<sup>87</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 222-26.

<sup>88</sup> Shapiro, *supra* note 4, at 36.

TABLE A2  
SECOND CATEGORY: HIGHLY PROBABLE  
FALSE CONFESSIONS (N =18)

Case Identification	Confessor	Year	Sources
35	George Abney	1986	Cooper; <sup>89</sup> Ofshe <sup>90</sup>
36	Melvin Beamon	1988	Radelet et al. <sup>91</sup>
37	William Boyd	1983	Drell <sup>92</sup>
38	Betty Burns	1989	Siegel <sup>93</sup>
39	Jack Carmen	1975	Radelet et al.; <sup>94</sup> Franken <sup>95</sup>
40	Edgar Garrett	1995	Ofshe & Leo; <sup>96</sup> BNA Crim. Prac. Man. <sup>97</sup>
41	Gary Gauger	1993	Held; <sup>98</sup> Quintanilla; <sup>99</sup> Mount <sup>100</sup>
42	Joseph Giarratano	1979	Arney; <sup>101</sup> McCarthy <sup>102</sup>
43	Paul Ingram	1988	Ofshe; <sup>103</sup> Wright <sup>104</sup>
44	John Knapp	1973	Parloff; <sup>105</sup> Radelet et al. <sup>106</sup>
45	Richard Lapointe	1989	Connery; <sup>107</sup> Perske <sup>108</sup>

<sup>89</sup> Cooper, *supra* note 4, at A1.

<sup>90</sup> Richard J. Ofshe, *Coerced Confessions: The Logic of Seemingly Irrational Action*, 6 CULTIC STUD. J. 1 (1989) [hereinafter Ofshe, *Coerced Confessions*].

<sup>91</sup> RADELET ET AL., *supra* note 9, at 285.

<sup>92</sup> Adrienne Drell, *Trial to Focus on Police Hypnosis; Bible Student Sues for \$10 Million*, CHI. SUN TIMES, Jan. 18, 1988, at 11.

<sup>93</sup> Siegel, *A Peek at Back Alley Justice*, *supra* note 4, at A1; See also Barry Siegel, *Outraged Jury Puts Anger to Work in Stabbing Case Courts; Jurors Can't Believe Case Even Went to Trial; Their Stunning Protest Seems to Succeed for a While*, L.A. TIMES, Aug. 17, 1990, at A1 [hereinafter Siegel, *Outraged Jury*].

<sup>94</sup> RADELET ET AL., *supra* note 9, at 174.

<sup>95</sup> Harry Franken, *Carmen Cleared in Slaying O'Grady: Case Now Closed*, COLUMBUS CITIZEN J., Dec. 20, 1977, at 1. See also *State v. Carmen*, No. 76 AP-429 (Ohio Ct. App. June 7, 1977).

<sup>96</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 231-34.

<sup>97</sup> *Expose of False Confession Leads to Murder Acquittal*, 10 Crim. Prac. Man. (BNA) 8 (1996) [hereinafter BNA Crim. Prac. Man., *Expose of False Confession*].

<sup>98</sup> Held, *supra* note 4, at 1.

<sup>99</sup> Ray Quintanilla, *State Court Won't Review Gauger Case; Murder Conviction to Remain Overturned*, CHI. TRIB., Apr. 23, 1996, at 1.

<sup>100</sup> Charles Mount, *Doubt Told in Murder Conviction; Confession Coerced, Gauger Lawyer Says*, CHI. TRIB., Feb. 7, 1996, at 1.

<sup>101</sup> Arney, *supra* note 4, at A15.

<sup>102</sup> Colman McCarthy, *More than a Reasonable Doubt*, WASH. POST, Feb. 16, 1991, at A27.

<sup>103</sup> Ofshe, *Inadvertent Hypnosis*, *supra* note 4, at 125.

<sup>104</sup> LAWRENCE WRIGHT, REMEMBERING SATAN: A CASE OF RECOVERED MEMORY AND THE SHATTERING OF AN AMERICAN FAMILY (1994).

<sup>105</sup> PARLOFF, *supra* note 4, at 392-93.

<sup>106</sup> Radelet et al., *supra* note 4, at 946-47.

<sup>107</sup> CONNERY, *supra* note 4, at 1-6.



46	Jessie Miskelley	1993	Ofshe; <sup>109</sup> Chase <sup>110</sup>
47	Bradley Page	1984	Page; <sup>111</sup> Pratkanis & Aronson <sup>112</sup>
48	Juan Rivera	1993	Brandon & Martin; <sup>113</sup> Martin & Parsons <sup>114</sup>
49	Tom Sawyer	1986	Ofshe & Leo; <sup>115</sup> Ofshe <sup>116</sup>
50	Martin Tankleff	1988	Writ of Hab. Corp; <sup>117</sup> BNA Crim. Prac. Man. <sup>118</sup>
51	Douglas Warney	1996	Herbert; <sup>119</sup> Dwyer <sup>120</sup>
52	Dale Zamarrippa	1993	Thomas; <sup>121</sup> Manson <sup>122</sup>

<sup>108</sup> Robert Perske, *The Battle for Richard Lapointe's Life*, in MENTAL RETARDATION 323 (1996).

<sup>109</sup> Richard Ofshe, *I'm Guilty if You Say So*, in BORCHARD, *supra* note 3, at 95, 187 [hereinafter Ofshe, *I'm Guilty if You Say So*].

<sup>110</sup> Chase, *supra* note 4, at 1A.

<sup>111</sup> Page, *supra* note 4, at 1.

<sup>112</sup> ANTHONY PRATKANIS & ELLIOT ARONSON, AGE OF PROPAGANDA: THE EVERYDAY USE AND ABUSE OF PERSUASION 174 (1991).

<sup>113</sup> Karen Brandon & Andrew Martin, *Rivera the Wrong Man, Jurors Are Told*, CHI. TRIB., Nov. 17, 1993, at 1.

<sup>114</sup> Andrew Martin & Christi Parsons, *Confession Holds Up in Rivera Cases*, CHI. TRIB., Nov. 21, 1993, at 1.

<sup>115</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 234-38.

<sup>116</sup> Ofshe, *Coerced Confessions*, *supra* note 90, at 1-2. See also State v. Sawyer, 561 So. 2d 278 (Fla. Dist. Ct. App. 1990).

<sup>117</sup> Petition of Martin H. Tankleff For A Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (E.D.N.Y. 1996) (No. 96-CV-0507) (on file with authors).

<sup>118</sup> *Habeas Attack Emphasizes Coerced Confession*, 10 Crim. Prac. Man. (BNA) 91 (1996) [hereinafter BNA Crim. Prac. Man., *Habeas Attack*].

<sup>119</sup> Herbert, *supra* note 4, at A5.

<sup>120</sup> Dwyer, *State's Unjust Blood Lust*, *supra* note 55, at 6; Dwyer, *Slay Confession*, *supra* note 55, at 8.

<sup>121</sup> Thomas, *supra* note 4, at 133.

<sup>122</sup> Pamela Manson, *False Confession Suit Filed; Mesa Police Accused of Coercing Man into Admitting Molestation*, ARIZ. REPUBLIC, Mar. 28, 1995, at A1.

TABLE A3  
THIRD CATEGORY : PROBABLE FALSE CONFESSIONS (N =8)

Case Identification	Confessor	Year	Sources
53	Luis Benavidez	1992	Lozano; <sup>123</sup> Bidwell <sup>124</sup>
54	Jane Bolding	1985	Ginsburg; <sup>125</sup> Patch <sup>126</sup>
55	Barry Fairchild	1983	ABC News; <sup>127</sup> Perske <sup>128</sup>
56	Tammy Harrison	1979	Hart <sup>129</sup>
57	Charles Lawson	1991	Houtz <sup>130</sup>
58	Linda Stangel	1995	Freedlander; <sup>131</sup>
59	Cyril Walton	1991	Darby <sup>132</sup>
60	Delbert Ward	1990	Perske; <sup>133</sup> CBS News; <sup>134</sup> Wecht <sup>135</sup>

### III. FINDINGS

#### A. PROVEN FALSE CONFESSIONS

There are four sub-types of proven false confessions: the suspect confessed to a crime that did not happen; the evidence objectively demonstrates that the defendant could not possibly have committed the crime; the true perpetrator was identified and his guilt established; or the defendant was exonerated by scientific evidence.

##### 1. *The Suspect Confessed to a Crime That Did Not Happen*

Police interrogators may extract a confession to a crime that did not, in fact, occur. In Austin, Texas in 1990, after twice fail-

<sup>123</sup> Lozano, *supra* note 4, at B1.

<sup>124</sup> Carol Bidwell, *Former Ranch Foreman Acquitted of '88 Killing*, L.A. DAILY NEWS, July 23, 1992, at 1.

<sup>125</sup> Steve Ginsburg, *Byline*, UNITED PRESS INT'L., June 20, 1988.

<sup>126</sup> Kim Patch, *Byline*, UNITED PRESS INT'L., Sept. 30, 1987.

<sup>127</sup> *Confession at Gunpoint?*, *supra* note 10.

<sup>128</sup> PERSKE, *supra* note 3, at 102-03. See also Fairchild v. Lockhart, 744 F. Supp. 1429 (E.D. Ark. 1989), *aff'd*, 990 F.2d 1292 (8th Cir. 1990).

<sup>129</sup> William Hart, *The Subtle Art of Persuasion*, POLICE MAG., Mar. 1981, at 7-17.

<sup>130</sup> Houtz, *supra* note 4, at B1.

<sup>131</sup> Kate Freedlander, *Witness Says Police Used "Brainwashing" to Get Confession*, OREGONIAN, Jan. 16, 1997, at E06. See also Kate Freedlander, *Jury Convicts Stangel in Death*, OREGONIAN, Jan. 17, 1997, at A1 [hereinafter Freedlander, *Stangel*].

<sup>132</sup> Joe Darby, *Prosecutors Reject Murder Confession*, NEW ORLEANS TIMES-PICAYUNE, Feb. 4, 1994, at B2.

<sup>133</sup> PERSKE, *supra* note 3, at 93.

<sup>134</sup> *Face to Face with Connie Chung* (CBS News Television Broadcast, Feb. 11, 1991) [hereinafter CBS News, *Face to Face*].

<sup>135</sup> CYRIL WECHT, CAUSE OF DEATH 238-62 (1993).

ing a polygraph test, Billy Gene Davis confessed that he killed his ex-girlfriend; she subsequently turned up alive in Tucson, Arizona.<sup>136</sup> Even if the underlying event did in fact occur, police may induce a confession to a non-existent crime. In 1993, Phoenix, Arizona police elicited a confession from Christina Mason to killing her three-month-old infant by letting another woman inject the child with heroin and cocaine to prevent it from crying.<sup>137</sup> The autopsy, however, revealed no drugs other than Tylenol in the baby's body, and the medical examiner concluded that the likely cause of death was pneumonia or a viral infection.<sup>138</sup>

## 2. *The Defendant Could Not Have Committed The Crime*

Police may extract a confession from an individual who could not have committed the crime. In 1987, Los Angeles, California police interrogators elicited false confessions from two suspects—Ruben Trujillo and Pedro Delvillar—to the same double murder and robbery.<sup>139</sup> Yet both men were in police custody (one in a county jail and the other at a California Youth Authority facility) for other crimes when the murders occurred.<sup>140</sup> In another example of flawed interrogation, police in Laguna Beach, California obtained a confession to arson from Jose Soto Martinez in 1993, but prosecutors dismissed charges when they discovered that Martinez had been in a Mexican prison at the time of the arson.<sup>141</sup> Similarly, in 1986 Montana police elicited a false confession to a sexually motivated killing from Ivan Reliford, but later discovered that Reliford was in custody when the crime was committed.<sup>142</sup>

The cases in this study reveal many reasons why someone could not have committed the crime to which he confessed. In 1973, Connecticut State Police elicited a confession from Peter Reilly to killing and mutilating his mother.<sup>143</sup> After a jury trial, conviction, and then reversal by an appellate court, the prosecu-

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<sup>136</sup> Phillips, *supra* note 4, at B3.

<sup>137</sup> Rossmiller & Creno, *supra* note 4, at B4.

<sup>138</sup> *Id.*

<sup>139</sup> Feldman, *supra* note 44, at B1.

<sup>140</sup> *Id.*

<sup>141</sup> Granberry, *supra* note 4, at A1.

<sup>142</sup> *Man Lied About Sex Killing*, *supra* note 71, at 40.

<sup>143</sup> See CONNERY, *supra* note 3, at 20; BARTHEL, *supra* note 70; see also Reilly v. State, 355 A.2d 324, 328 (Conn. Super. Ct. 1976).

tor handling the second trial discovered that the former prosecutor's files contained documents showing that Reilly arrived at the scene of the murder only minutes before the police and thus could not have committed the crime.<sup>144</sup>

In 1982, James Harry Reyos confessed in New Mexico that he had killed a Catholic priest a year earlier.<sup>145</sup> The victim died between 7 p.m. and midnight in Odessa, Texas,<sup>146</sup> but gas receipts and an eyewitness established that Reyos was in Roswell, New Mexico (200 miles away) at 8 p.m. that evening,<sup>147</sup> and a speeding ticket proved that he was also in Roswell shortly after midnight.<sup>148</sup> To have committed the murder, Reyos would have had to drive 200 miles to the murder site, kill the priest in no more than one minute and speed 215 miles back to where he received the speeding ticket—in four hours (averaging well over 100 miles an hour on narrow, country roads). Eventually the state's attorney handling Reyos' appeal conceded that Reyos could not have committed the crime.<sup>149</sup>

In 1995, in Portland, Oregon, police extracted false confessions from Rick Nieskins and Christopher Cole to the 1991 murder of John Sewell.<sup>150</sup> Both men were charged with homicide, and both spent thirteen months in jail awaiting trial—even though two other men had been convicted of Sewell's murder in 1991 and had always maintained that they acted alone.<sup>151</sup> Prosecutors eventually dropped charges against Nieskins after records showed that he could not have committed the crime because he was at a homeless shelter in Seattle at the time of the killing.<sup>152</sup> Once they acknowledged Nieskins' false confession, prosecutors admitted that Cole also could not have been involved in the crime and dropped charges against him.<sup>153</sup>

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<sup>144</sup> Joseph O'Brien, *Mother's Killing Still Unresolved, But Peter Reilly Puts Past Behind; 20 Years After Trial, Reilly Puts Past Behind*, HARTFORD COURANT, Sept. 23, 1993, at A1. More than 20 years after Reilly's innocence was conclusively established, some Connecticut Police continue to insist that he killed his mother. *Id.*

<sup>145</sup> Carroll, *supra* note 4, at 41.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*; see also Swindle, *supra* note 75, at 1A.

<sup>148</sup> Swindle, *supra* note 75, at 1A.

<sup>149</sup> *Id.*

<sup>150</sup> Smith, *supra* note 4, at D1.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

### 3. *The True Perpetrator Was Identified and His Guilt Established*

Police may elicit a confession that is proven false when the true perpetrator is identified. Sometimes this occurs fortuitously when police encounter the perpetrator in connection with another crime and obtain a demonstrably reliable confession. In 1979, after twenty-one hours of interrogation by West Virginia State Police, Paul Reggetz confessed to murdering his wife and two children.<sup>154</sup> Reggetz spent eleven months in pre-trial incarceration before one of his neighbors confessed.<sup>155</sup> In 1990, Suffolk County, New York police interrogated Anthony Atkinson for three-and-a-half hours before he confessed to murder and sodomy.<sup>156</sup> Later, two other men confessed to the crime, and charges against Atkinson were dismissed.<sup>157</sup> In 1994, Guy Lewis confessed to Memphis, Tennessee police to shooting and killing his girlfriend.<sup>158</sup> The prosecutor was preparing to bring charges against him when Tony Hedges and Michael Maclin were arrested and each confessed to the murder.<sup>159</sup> In 1996, Robert Moore confessed to the capital murder and robbery of a taxi driver after Nassau County, New York detectives interrogated him for twenty-five hours.<sup>160</sup> Moore was released only because police happened to arrest one of the actual killers on unrelated charges, and he confessed and identified his two co-perpetrators.<sup>161</sup> In 1996, in Daytona Beach, Florida, police extracted a confession to capital murder and robbery from Donald Shoup, a mentally handicapped teenager.<sup>162</sup> While Shoup was awaiting trial, the true killer confessed.<sup>163</sup>

In one of the century's most dramatic and disturbing false confession cases, prosecutors dismissed charges against three false confessors after routine detective work identified the true

<sup>154</sup> See YANT, *supra* note 3, at 90-91; Paxton, *supra* note 4, at A2.

<sup>155</sup> See YANT, *supra* note 3, at 90-91.

<sup>156</sup> Colwell, *supra* note 4, at 23; Demoretechky, *supra* note 35, at 7.

<sup>157</sup> Demoretechky, *supra* note 35, at 7.

<sup>158</sup> Perrusquia, *supra* note 4, at A1.

<sup>159</sup> *Id.*

<sup>160</sup> Herbert, *supra* note 4, at A5; Dwyer, *State's Unjust Blood Lust*, *supra* note 55, at 6.

<sup>161</sup> Herbert, *supra* note 4, at A5; Dwyer, *State's Unjust Blood Lust*, *supra* note 55, at 6.

<sup>162</sup> Holland, *supra* note 4, at 1A. For a discussion of the characteristics of the mentally handicapped that make them especially vulnerable to police-induced false confession, see Ofshe & Leo, *Social Psychology*, *supra* note 4, at 211-14.

<sup>163</sup> Holland, *supra* note 4, at 1A.

killers.<sup>164</sup> In 1991, during interrogations that lasted up to twenty-one hours, Maricopa County Sheriffs in Phoenix, Arizona coerced false confessions from Leo Bruce, Mark Nunez, and Dante Parker to the mass murder of nine persons at a Buddhist temple.<sup>165</sup> While prosecutors were preparing capital cases against the defendants, a ballistics test was carried out on a rifle that was picked up for testing the same day that Bruce, Nunez, and Parker were interrogated.<sup>166</sup> It proved to be the murder weapon. The rifle had been in the possession of Jonathan Doody and Alex Garcia the night of the murder. Searches led to the discovery of loot in the possession of both Doody and Garcia. Both adolescents confessed to the murders, and Garcia supplied the police with a detailed account of how he and Doody planned and carried out the killings.<sup>167</sup>

Garcia not only confessed to the nine Temple murders, but also to murdering Alice Marie Cameron shortly before being arrested for the Temple murders.<sup>168</sup> The police delayed doing the ballistics test on the rifle that led to Garcia's arrest because they were occupied first with coercing false confessions from Bruce, Nunez, and Parker and then with the media storm and public protests against the police that followed the disputed confessions.<sup>169</sup>

To make matters even worse, Maricopa County Sheriffs had also extracted a confession to Cameron's murder from George Peterson, a mentally ill adult, during a sixteen hour interrogation.<sup>170</sup> When Garcia admitted to the Cameron murder fourteen months later, Peterson was awaiting trial for capital murder for the same crime.<sup>171</sup>

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<sup>164</sup> See Kimball & Greenberg, *False Confessions*, *supra* note 37; see also Kimball & Greenberg, *Revelations*, *supra* note 37; Kimball & Greenberg, *Trials and Tribulations*, *supra* note 37; Parloff, *False Confessions*, *supra* note 4, at 58-62.

<sup>165</sup> See Kimball & Greenberg, *False Confessions*, *supra* note 37.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* Had police done the ballistics test in a timely fashion, Garcia would have been arrested weeks before he killed Cameron.

<sup>170</sup> *Id.* See also McMahon, *supra* note 4, at 5.

<sup>171</sup> Kimball & Greenberg, *False Confessions*, *supra* note 37; see generally Parloff, *supra* note 4; McMahon, *supra* note 4.



#### 4. *The Defendant Was Exonerated By Scientific Evidence*

Police may elicit a confession that is conclusively proven false by scientific evidence. In 1996, police in West Palm Beach, Florida elicited a confession to capital murder from Martin Salazar, but prosecutors dropped charges when the defense discovered that fingerprint evidence clearing Salazar had been withheld by the police and the prosecutor.<sup>172</sup> During an interrogation in 1980, Chicago police reshaped a dream by Steven Linscott into a murder confession, but DNA testing established his innocence many years later.<sup>173</sup> In 1983, Virginia police elicited several confessions from Earl Washington—including one to the rape and murder of Rebecca Williams.<sup>174</sup> In 1993, DNA evidence established that Washington could not have been responsible for any of these crimes.<sup>175</sup> In 1996, in Sitka, Alaska, Richard Bingham confessed to being the lone rapist and killer of seventeen-year-old Jessica Baggen.<sup>176</sup> DNA testing excluded Bingham as the source of the semen found in the victim.<sup>177</sup> The foreign hair found on the victim's body was not Bingham's nor was the fingerprint found on a cigarette pack at the crime scene.<sup>178</sup> Bingham was also unable to describe the unusual properties of the physical scene where the body was found nor the unusual way in which the victim had been silenced.<sup>179</sup> Bingham was acquitted at trial.<sup>180</sup>

Notwithstanding the numerous examples of proven false confessions reported in this article, it is difficult to establish conclusively that a defendant's confession is false even when the evidence of innocence is compelling. Once a suspect has confessed, it is rare for the crime to evaporate, for the true perpe-

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<sup>172</sup> See Ofshe & Leo, *Social Psychology*, *supra* note 4, at 242; Folks, *supra* note 4, at B1. After Salazar's case was dismissed, the state eventually located an expert who, contrary to the Florida Department of Law Enforcement, said that while Salazar was not a match, he could not be excluded. The state then re-indicted Salazar. See Grand Jury Indictment of Martin Salazar for First Degree (Palm Beach County Ct., Oct. 7, 1997) (No. 97-11428CFA02).

<sup>173</sup> See CONNORS ET AL., *supra* note 4, at 64-65; LINSYCOTT, *supra* note 4, at 210.

<sup>174</sup> During this interrogation, Washington confessed to three other rapes that police subsequently determined he could not have committed. See White, *supra* note 3, at 121-25; Hourihan, *supra* note 4, at 1491-501.

<sup>175</sup> *Id.*

<sup>176</sup> *Sitka Murder*, *supra* note 36.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

trator to be apprehended, for police or prosecutors to discover that the defendant could not have committed the crime, or for scientific evidence to exonerate him. The standard for inclusion into the proven false category—established innocence—is a formidable barrier.

## B. HIGHLY PROBABLE FALSE CONFESSIONS

While our research has unearthed numerous examples of highly probable false confessions, only a small number of these cases are reported here.

### 1. *Bradley Page*

In 1984, Oakland, California police persuaded Bradley Page that he killed his girlfriend, Bibi Lee.<sup>181</sup> His vague, confused, and speculative confession occurred during a sixteen hour interrogation that was only partially recorded.<sup>182</sup> Despite Page's confession, no evidence (physical or otherwise) corroborated his involvement in the crime.<sup>183</sup> On the other hand, abundant evidence supported the conclusion that he was innocent.<sup>184</sup>

Page's post-admission narrative did not fit the known crime facts. Page stated that Lee died after he slapped her with the back of his hand,<sup>185</sup> causing her to fall and become unconscious as a trickle of blood came from her nose.<sup>186</sup> It was not until days after the interrogation that the coroner determined that Lee had three large breaks at the base of the skull, causing considerable bleeding.<sup>187</sup> At the time of Page's interrogation the police did not know the extent of Lee's skull fractures, nor

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<sup>181</sup> Interrogation Transcript of Bradley Page, Oakland, Cal. Police Dep't (Dec. 10, 1984) (on file with authors) [hereinafter Page, Interrogation Transcript].

<sup>182</sup> *Id.*

<sup>183</sup> See Alix Christie, *The Strange Confession of Bradley Page: Bibi Lee's Lover Imagined a Crime But Did He Commit It?*, 27 BERKELEY MONTHLY 21, 46 (1986) ("[w]hen the laboratory analyses came back from the F.B.I., it became obvious that his 'confession' was all that connected Brad page to the Crime"); see also MELANIE THERNSTROM, *THE DEAD GIRL* 247 (1990) ("[t]here was, after all, apart from the confession no evidence at all").

<sup>184</sup> See generally Page, *supra* note 4.

<sup>185</sup> Page, Interrogation Transcript, *supra* note 181, at 3 (tape #2).

<sup>186</sup> *Id.* at 4.

<sup>187</sup> Page, *supra* note 4, at 12. See also THERNSTROM, *supra* note 183, at 179 ("Found in a hallow grave by search dogs . . . nose broken, eye orbit shattered, three separate blows to the head with some heavy sharp-edged instrument, assumed to be a rock . . . [was a] skull cracked open").

apparently did Page.<sup>188</sup> Page also stated that he made love to the dead body on a blanket taken from his vehicle;<sup>189</sup> in fact, the blanket contained no evidence of sexual activity,<sup>190</sup> no blood stains from Lee's massive head wounds,<sup>191</sup> no signs of having been washed,<sup>192</sup> and the hairs found on the blanket were not Lee's.<sup>193</sup> Page guessed that he used a spare hubcap that was in his vehicle in an attempt to bury Lee,<sup>194</sup> but the fibers and soil from the hubcap did not match either the fibers of Lee's clothing or the soil where her body was found.<sup>195</sup> Page also stated that he dragged Lee's body more than 100 yards before burying it.<sup>196</sup> Had this happened there would have been a trail of blood<sup>197</sup> that surely would have been found by the various search and rescue and dog tracking teams that, beginning the day after her disappearance, spent hundreds of hours combing the area where Lee's body was eventually found.<sup>198</sup>

In addition to the numerous discrepancies between Page's post-admission narrative and the facts of the crime, police ignored eyewitness evidence pointing to another suspect.<sup>199</sup> In

<sup>188</sup> Page, Interrogation Transcript, *supra* note 181.

<sup>189</sup> *Id.* at 7 (tape #2).

<sup>190</sup> Page, *supra* note 4, at 12; *see also* Christie, *supra* note 183, at 46.

<sup>191</sup> Page, *supra* note 4, at 12.

<sup>192</sup> *Id.* It appeared that the blanket had not even been unfolded almost five years. *See* THERNSTROM, *supra* note 183, at 237.

<sup>193</sup> *See* Page, *supra* note 4, at 12; *see also* THERNSTROM, *supra* note 183, at 237 (eight hairs were found on the blanket, none of which matched Bibi Lee's); Christie, *supra* note 183. Police interrogators at times seem to be obsessed with weird sex. One soft indicator of a false confession is that a suspect who has no known or discoverable history of aberrant sexual obsessions includes in his confession a report of a bizarre sexual act (such as necrophilia as in the Page confession, biting off the victim's nipple as in the Abney confession or anal rape as in the Sawyer case) which turns out not even to be a fact of the crime. If the confession itself is the result of the interrogator's influence over the suspect, then it is likely that reports of bizarre crime elements that did not happen are also traceable to influence from the interrogator.

<sup>194</sup> Page, Interrogation Transcript, *supra* note 181, at 8 (tape #2).

<sup>195</sup> Page, *supra* note 4, at 12. *See also* THERNSTROM, *supra* note 183, at 237; Christie, *supra* note 183, at 46.

<sup>196</sup> Page, Interrogation Transcript, *supra* note 181, at 7-8 (tape #2).

<sup>197</sup> The pathologist at trial testified that the kind of head injury that the victim sustained would have produced a fair amount of blood. *See* THERNSTROM, *supra* note 183, at 383.

<sup>198</sup> *See* Page, *supra* note 4, at 12, 14-15; *see also* THERNSTROM, *supra* note 183, at 81. The massive hunt for the body of the victim, Bibi Lee, began the day after her disappearance, November 5, 1984.

<sup>199</sup> Page, *supra* note 4, at 14-15. *See also* THERNSTROM, *supra* note 183, at 197, 383; *see also* *Eye To Eye with Connie Chung: Confession* (CBS News Television Broadcast, Jan. 13, 1994) [hereinafter CBS News, *Confession*].

1994 CBS News identified Michael Ihde—whose appearance was consistent with the reported eyewitness evidence and whose DNA and pattern of killing linked him to other local area murders—as Lee’s murderer.<sup>200</sup> Ihde was in prison in Washington State for two similar murders when he bragged that he killed three San Francisco Area women—one of whom was non-white (Lee was Asian American).<sup>201</sup> Having convicted Page after two jury trials,<sup>202</sup> Alameda County prosecutors declined to charge Ihde with Lee’s murder, but did charge him with a similar murder that happened within weeks of Lee’s death.<sup>203</sup>

## 2. Tom Sawyer

In 1986, Clearwater, Florida police coerced a confession from Tom Sawyer to the rape and murder of Janet Staschak after sixteen hours of interrogation that included numerous threats.<sup>204</sup> There was no evidence linking Sawyer to the crime,<sup>205</sup> and his post-admission narrative fit poorly with the facts of the case.<sup>206</sup> For example, presuming that Staschak had been sexually assaulted, the interrogators led Sawyer to admit to both vaginal and anal rape during the creation of the post-admission narrative of the crime,<sup>207</sup> but the medical examiner reported no evidence of sexual assault.<sup>208</sup> Despite strenuous efforts by the interrogators, Sawyer was unable to corroborate the confession by supplying information about the victim’s missing clothing, miss-

<sup>200</sup> CBS News, *Confession*, *supra* note 199. See also Don Martinez, *Killer Tied to E. Bay Slaying Authorities also Investigation Convict’s Connection to 3 Killings from a Decade Ago*, S.F. EXAMINER, Jan. 11, 1994, at A1.

<sup>201</sup> Martinez, *supra* note 200, at A1.

<sup>202</sup> The jury in the first trial acquitted Page of second degree murder but deadlocked 8-4 on the charge of voluntary manslaughter. The jury in the second trial found Page guilty of voluntary manslaughter after six days of deliberations, and he was sentenced to six years in prison. See Page, *supra* note 4, at 20-21; PRATKANIS & ARONSON, *supra* note 112, at 176-77.

<sup>203</sup> Page was released after serving two years and eight months of his six year sentence. See Page *Free After Doing 2 1/2 Years for 1984 Killing of His Girlfriend*, S.F. EXAMINER, Feb. 11, 1995, at A5.

<sup>204</sup> Interrogation Transcript of Tom Sawyer, Clearwater, Fla. Police Dep’t (Nov. 6-7, 1986) (No. 86-28504) (on file with authors). See also State v. Sawyer, 561 So. 2d 278 (Fla. Dist. Ct. App. 1990); Ofshe & Leo, *Social Psychology*, *supra* note 4 at 234-38; Ofshe, *Coerced Confessions*, *supra* note 90, at 6-14.

<sup>205</sup> Ofshe, *Coerced Confessions*, *supra* note 90, at 12.

<sup>206</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 237.

<sup>207</sup> Interrogation Transcript of Tom Sawyer, *supra* note 204, at 231.

<sup>208</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 237.

ing keys, or the tape used to bind her.<sup>209</sup> After the trial judge suppressed Sawyer's confession,<sup>210</sup> the state dismissed the charges, since no evidence of his guilt existed.<sup>211</sup>

### 3. *Martin Tankleff*

After five-and-one-half hours of accusatory interrogation in 1988,<sup>212</sup> Suffolk County, New York police obtained a confession from Martin Tankleff, then seventeen-years-old, to brutally stabbing and murdering his parents.<sup>213</sup> No evidence linked Tankleff to the crime, and his post-admission narrative did not match the facts of the case.<sup>214</sup> Instead, Tankleff's narrative matched (indeed it was) the flawed theory of the crime that police detectives held at the time of Tankleff's interrogation.<sup>215</sup> Tankleff confessed to killing his parents with a dumbbell and a watermelon knife, yet both items tested negative for blood traces, hair and fibers.<sup>216</sup> Medical testimony established that the head injuries to Martin's father were caused by a hammer.<sup>217</sup> Tankleff confessed to beating his mother with a dumbbell and then fighting with her, which would have been consistent with the defensive wounds on her arms, but Tankleff's body was unscratched and the absence of any bruises suggested that he had not been in a life or death struggle with anyone.<sup>218</sup> Tankleff confessed that he took a shower to wash away the substantial bloodstains the killings would have left on the perpetrator, but no blood residue or hairs from his parents were found in his shower.<sup>219</sup> Tankleff had one bloodstain on his shoulder that could have been acquired when he discovered the bodies, but would have been washed away if he showered to remove the substantial bloodstains that likely marked the killer.<sup>220</sup> Tankleff confessed to assaulting his parents between 5:35 a.m. and 6:10 a.m., but his mother's time

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<sup>209</sup> *Id.*

<sup>210</sup> See *Sawyer*, 561 So. 2d at 297.

<sup>211</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 238.

<sup>212</sup> BNA Crim. Prac. Man., *Habeas Attack*, *supra* note 118, at 92.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 94.

<sup>215</sup> *Id.* at 95.

<sup>216</sup> *Id.* at 94.

<sup>217</sup> *Id.* at 95.

<sup>218</sup> *Id.* at 94-95.

<sup>219</sup> *Id.* at 94.

<sup>220</sup> *Id.*

of death was established to be much earlier.<sup>221</sup> Tankleff confessed to killing his mother and then walking through the house before attacking his father, but none of his mother's blood was found along this pathway.<sup>222</sup> The killer used gloves, but Tankleff's confession made no reference to gloves.<sup>223</sup> Tankleff confessed that after showering he removed his father from the chair and did not shower again, yet Tankleff's clothes were not blood-stained.<sup>224</sup> His confession was not corroborated by the physical evidence that should have linked him to the crime (if, in fact, he were guilty) and was merely a regurgitation of the factually erroneous theory the detectives admitted they had initially held. Nevertheless, a jury convicted Tankleff of two counts of second degree murder.<sup>225</sup> Tankleff's judge sentenced him to prison for fifty years to life.<sup>226</sup>

#### 4. *Richard Lapointe*

In 1989, two years after the murder of Bernice Martin, Manchester, Connecticut Police interrogated Richard Lapointe, the husband of the victim's granddaughter.<sup>227</sup> During an unrecorded nine and one-half hour interrogation, Lapointe, a mentally handicapped adult, signed three contradictory confessions to raping, stabbing, and strangling the victim.<sup>228</sup> No physical evidence either linked Lapointe to the crime or corroborated any of his incriminating statements. In fact, each of Lapointe's three confessions was inconsistent with the others and contradicted the facts of the crime.<sup>229</sup> In 1992, a jury convicted

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> Carolyn Colwell, *Tankleff's Family: Jury Goofed Relatives Say "Poker Face" Hurt Teen in Murder Trial*, *NEWSDAY*, July 3, 1990, at 6.

<sup>226</sup> Carolyn Colwell, *Tankleff Appeal: Murder Trial Unfair*, *NEWSDAY*, Aug. 16, 1992, at 21. Convicted in June of 1990, Tankleff continues to serve his sentence of fifty years to life at the Clinton Correctional Facility in Dannemora, New York. His conviction is under appeal. See *Tankleff v. Senkowski*, Nos. 97-2063, 97-2116, 1998 WL 29961 (2d Cir. Jan. 12, 1998).

<sup>227</sup> See CONNERY, *supra* note 3, at 1-2.

<sup>228</sup> Confession Statements of Richard Lapointe, Manchester, Conn. Police Dep't (July 4, 1989) (in possession of authors). See also Donald S. Connery, *Justice Unserved?: Connecticut is About to Witness the Appeal of Another Murder Conviction Based on a Questionable Confession*, in BORCHARD, *supra* note 3, at 33.

<sup>229</sup> See Tom Condon, *Reasonable Doubt*, in CONNERY, *supra* note 3, at 28 ("The confession has so many inconsistencies that it is almost as if Lapointe confessed to the wrong crime").



Lapointe of capital felony murder and eight related charges, and sentenced him to life in prison without the possibility of parole plus sixty years.<sup>230</sup> Lapointe remains in prison today with little hope of ever being released.

An analysis of the fit between Lapointe's post-admission narrative and the facts of the crime reveals that it would have been virtually impossible for Lapointe to have committed the crime in the time available to him. In an interview with his wife immediately following Lapointe's arrest (an interview police chose to record),<sup>231</sup> Mrs. Lapointe recounted her husband's activities on the day of her grandmother's death. Her account provided Lapointe with an alibi for all but thirty to forty-five minutes of the day.<sup>232</sup> In that brief period Lapointe would have had to have walked ten minutes to Bernice Martin's apartment, have coffee with her, rape her, bind her, stab her, set fire to the apartment and walk back to his residence.<sup>233</sup> Yet, when he returned after his walk Lapointe did not appear sweaty or disheveled.<sup>234</sup> Lapointe confessed to killing the victim at the location in her apartment where the police believed she had been stabbed, on the couch.<sup>235</sup> However, medical testimony established that she was not killed while on the couch.<sup>236</sup> Lapointe admitted to an erroneous police theory of the victim's death, manual strangulation with both hands,<sup>237</sup> but the medical examiner reported that the victim died from strangulation by compression (i.e., a blunt object had been pushed against the right side of her neck).<sup>238</sup> Lapointe confessed to moving the victim's body (the police theory of the crime at the time of the interrogation), which weighed 160 pounds.<sup>239</sup> However, Lapointe, suf-

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<sup>230</sup> Connery, *supra* note 228, at 35.

<sup>231</sup> Alex Wood, *Does Police Lying Compromise Society's Search for Justice*, J. INQUIRER, Jan. 9, 1995, at 4-5.

<sup>232</sup> Condon, *supra* note 229, at 25.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Tom Condon, *Lapointe Case Pinpoints Need for Reforms*, HARTFORD-CURRENT, Sept. 19, 1995, at A3.

<sup>236</sup> Condon, *supra* note 229, at 29.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> Autopsy Report of Bernice Martin by Arkady Katsnelson, Medical Examiner, State of Conn., Office of the Chief Medical Examiner (Mar. 9, 1987) (on file with authors).

fers from Dandy-Walker Syndrome<sup>240</sup> and has shunts surgically inserted in his head that render him incapable of lifting more than fifty pounds.<sup>241</sup> Lapointe confessed to the sexual assault theory of the crime held by the police—rape with his penis. In fact, the victim was raped with a blunt instrument.<sup>242</sup> The killer's gloves were left behind at the crime scene, but they were too large to fit Lapointe's tiny hands.<sup>243</sup> Eyewitnesses saw a large man who did not match Lapointe's description running away from the crime scene;<sup>244</sup> they insisted that this man was not Lapointe.<sup>245</sup>

### 5. *Jessie Misskelley, Jr.*

In 1993 West Memphis, Arkansas police coerced a confession from Jessie Lloyd Misskelley, Jr., a mentally handicapped seventeen-year-old.<sup>246</sup> He confessed to participating as an accessory in the brutal murder of three eight-year-old boys.<sup>247</sup> Misskelley's statement to police was inconsistent with the facts of the case, was not supported by any evidence, and demonstrated that he lacked personal knowledge of the crime. Misskelley confessed that he witnessed the murders taking place around noon<sup>248</sup> when, in fact, the victims were all in school. They did not disappear until after approximately 5:30 p.m.<sup>249</sup> Misskelley confessed that a brown rope had been used to bind the boys<sup>250</sup>

<sup>240</sup> Dandy Walker Syndrome is a congenital brain malformation in which cysts form on the brain from a buildup of fluid on the skull. As a result, Lapointe is missing connective tissue between the hemispheres in the cerebella area. See Perske, *supra* note 108, at 323; see also Stephen Greenspan, *There is More to Intelligence than IQ*, in CONNERY, *supra* note 3, at 136-51.

<sup>241</sup> Perske, *supra* note 108, at 323.

<sup>242</sup> *Id.*

<sup>243</sup> *60 Minutes: Richard Lapointe: Did He Do It?* (CBS News Television Broadcast, June 30, 1996).

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> Ofshe, *I'm Guilty if You Say So*, *supra* note 109, at 101-02.

<sup>247</sup> Interrogation Transcript Nos. 1 & 2 of Jessie Misskelley, Jr., West Memphis, Ark. Police Dep't (June 3, 1993) (No. 93-05-0666) (on file with authors).

<sup>248</sup> Interrogation Transcript No. 1 of Jessie Misskelley, *supra* note 247, at 17.

<sup>249</sup> See Bartholomew Sullivan & Marc Perrusquia, *Relatives, Lawyers Dispute Account By Misskelley in Slayings of Boys*, COM. APPEAL, June 8, 1993, at A1. The briefly recorded portion of Misskelley's interrogation revealed that the interrogator manipulated Misskelley to place the killings at the correct time by raising the issue eight times and producing a series of shifts in Misskelley's response. See Interrogation Transcript Nos. 1 & 2 of Jessie Misskelley, *supra* note 247.

<sup>250</sup> Interrogation Transcript No. 2 of Jessie Misskelley, *supra* note 247, at 4.

when, in fact, shoelaces of various colors had been used.<sup>251</sup> Numerous alibi witnesses testified that at the time the three children disappeared and for the next five hours (during which the murders probably occurred), Misskelley was at a wrestling competition in a town forty miles away from the crime scene.<sup>252</sup> Despite the complete lack of any evidence of Misskelley's participation in the crime and despite his grossly incorrect confession, an Arkansas jury convicted Misskelley of one count of first degree murder and two counts of second degree murder.<sup>253</sup> He is currently serving a life sentence.<sup>254</sup>

#### 6. Gary Gauger

In 1993, after eighteen hours of confrontational, intense and highly deceptive interrogation in McHenry County, Illinois, sheriff's detectives extracted from Gary Gauger a hypothetical, unsigned confession to the brutal murder of both his parents.<sup>255</sup> According to police, Gauger said that he approached his parents from behind and slit their throats.<sup>256</sup> However, his alleged confession was inconsistent with the facts of the crime.<sup>257</sup> Even though police confiscated more than 160 items from the house where the double murders occurred,<sup>258</sup> not a single piece of evidence linked Gauger to the crime.<sup>259</sup> Police could not find any of Gauger's blood on knives<sup>260</sup> or faucets,<sup>261</sup> even though he allegedly washed his hands after the double murder.<sup>262</sup> Gauger gave the police the wrong number of slash wounds to his

<sup>251</sup> Glen Chase, *Toss Out Statement on Killing of 3 Boys, Lawyer Asks Judge*, ARK. DEMOCRAT-GAZETTE, Jan. 14, 1994, at B1.

<sup>252</sup> See Marc Perrusquia, *"Rowdy Rebel" Says Misskelley Was on Mat, Not at Death Site*, COM. APPEAL, Feb. 2, 1994, at A6; Glen Chase, *Friends Challenged on Misskelley Alibi*, ARK. DEMOCRAT-GAZETTE, Feb. 1, 1994, at A1.

<sup>253</sup> Lynda Natalki, *Dropout Found Guilty in Deaths of 3 Boys; Crime: Jessie Lloyd Misskelley Jr., 18 Is Sentenced to Life in Prison for the Brutal Slayings; Two Other Defendants Await Trial in Arkansas*, L.A. TIMES, Feb. 5, 1994, at A21.

<sup>254</sup> *Id.*

<sup>255</sup> Brief for the Appellant at 20, *People v. Gauger* (Ill. App. Ct. Oct 18, 1994) (No. 2-94-1199).

<sup>256</sup> *Id.* at 17.

<sup>257</sup> *Id.* at 30-43.

<sup>258</sup> *Id.* at 23.

<sup>259</sup> *Id.* at 30-43.

<sup>260</sup> *Id.* at 24.

<sup>261</sup> Charles Mount, *Doubt Told in Murder Conviction; Confession Coerced, Gauger Lawyer Says*, CHI. TRIB., Feb. 7, 1996, at 1.

<sup>262</sup> *Id.*

mother's throat, and his confession did not make any mention of the additional bludgeon wounds that his father suffered.<sup>263</sup> Gauger confessed to the police theory of the crime—slashing his parents' throats from behind while they were standing.<sup>264</sup> If they had been killed as Gauger described, blood would have spurted from both parents' throats across the room and onto the walls.<sup>265</sup> Though police found the victims lying in pools of blood, there was little or no blood on the walls and shelves surrounding them.<sup>266</sup> Moreover, medical testimony established that the victims' throats were slit while they were on the ground, not while they were standing.<sup>267</sup> An autopsy revealed that both victims had been beaten over the head, and that Gauger's father had been stabbed in the back—facts not contained in the confession.<sup>268</sup> A jury convicted Gauger of first degree murder.<sup>269</sup> The trial judge initially sentenced him to death,<sup>270</sup> but subsequently re-sentenced Gauger to life imprisonment without eligibility of parole.<sup>271</sup> Sixteen months later, an Illinois Appeals Court reversed his conviction and released him from prison because police had improperly obtained his confession.<sup>272</sup> Since then, federal prosecutors have charged two men belonging to a Detroit-based motorcycle gang with the murders of Gauger's parents.<sup>273</sup>

### 7. Edgar Garrett

In 1995, police in Goshen, Indiana persuaded Edgar Garrett that he killed his daughter, Michelle,<sup>274</sup> who had mysteriously

<sup>263</sup> *Id.*

<sup>264</sup> Appellant's Brief at 17, *Gauger* (No. 2-94-1199).

<sup>265</sup> See Becker & Martin, *supra* note 33, at 1.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> Ray Quintanilla, *Son Convicted of Murders Sees Freedom at Cell Door*, CHI. TRIB., Mar. 13, 1996, at 1.

<sup>270</sup> Ray Quintanilla, *High Court is Asked to Uphold Murder Conviction*, CHI. TRIB., May 27, 1996, at 1.

<sup>271</sup> *Id.*

<sup>272</sup> Ray Quintanilla, *McHenry County Judge Frees Man He Had Sentenced to Die*, CHI. TRIB., Oct. 5, 1996, at 1.

<sup>273</sup> See Ray Quintanilla & Meg Murphy, *17 Indicted in Trail of Violence by Biker Gang; Gauger Slayings Linked to Robbery by the Outlaws*, CHI. TRIB., June 11, 1997, at 1; see also Carolyn Starks, *Wisconsin Crime Led to Biker Suspects; Police Saw Similarities Between 1995 Burglary and Richmond Killings*, CHI. TRIB., June 12, 1997, at 1.

<sup>274</sup> Interrogation Transcript of Edgar Garrett, Goshen, Ind. Police Dep't (Jan. 27, 1995) (No. 20C01-9502-CF-003) (on file with authors). See also Ofshe & Leo, *Social*

disappeared.<sup>275</sup> During fourteen hours of interrogation,<sup>276</sup> Garrett gave an increasingly detailed confession describing how he murdered his daughter,<sup>277</sup> whose body had not yet been found.<sup>278</sup> No independent evidence linked Garrett to the crime or corroborated his confession,<sup>279</sup> and his post-admission narrative contradicted all the major facts in the case.<sup>280</sup> Garrett confessed to walking into a park with his daughter through new-fallen snow, bludgeoning her with an axe handle at a river's edge and dumping her body in the river.<sup>281</sup> However, the police officer who arrived first at the crime scene did not see footprints in the snow-covered field at the entry to the park, but instead saw tire tracks entering the park, bloody drag marks leading from the tire tracks to the river's edge and a single set of footprints going to and returning from the river.<sup>282</sup> Obviously, Michelle Garrett's body had been unloaded from a vehicle and dragged to the river, but Edgar Garrett did not own a car, and no evidence was ever uncovered that he had access to a car that day.<sup>283</sup> Michelle's coat was recovered from the river separately from her body,<sup>284</sup> suggesting Michelle had been killed indoors and transported to the river-bank.

Garrett's confession expressed the theory the police held at the time of the interrogation—that Michelle was clubbed to death.<sup>285</sup> It was not until weeks later, when her body was recovered, that the police and Garrett learned that Michelle had been stabbed thirty-four times.<sup>286</sup> Michelle's head showed no evidence of blunt force trauma, and, not surprisingly, the axe handle Garrett supposedly used to kill her carried no traces of

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*Psychology*, *supra* note 4, at 231-34; BNA Crim. Prac. Man., *Expose of False Confession*, *supra* note 97, at 8.

<sup>275</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 231.

<sup>276</sup> Interrogation Transcript of Edgar Garrett, *supra* note 274.

<sup>277</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 234.

<sup>278</sup> *Id.* See also BNA Crim. Prac. Man., *Expose of False Confession*, *supra* note 97, at 11-12.

<sup>279</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 234. See also BNA Crim. Prac. Man., *Expose of False Confession*, *supra* note 97, at 11-12.

<sup>280</sup> Ofshe & Leo, *Social Psychology*, *supra* note 4, at 234.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

her hair or blood.<sup>287</sup> At trial, the jury acquitted Garrett of capital murder.<sup>288</sup>

### 8. Douglas Warney

In 1996, Rochester, New York police elicited a confession from Douglas Warney to the brutal stabbing and murder of sixty-three-year-old William Beason.<sup>289</sup> Warney, a mentally handicapped man who was suffering from AIDS-related dementia at the time of his interrogation,<sup>290</sup> confessed to stabbing Beason fifteen or more times.<sup>291</sup> The District Attorney initially charged Warney with capital murder,<sup>292</sup> but reduced the charge to second degree murder after the New York media published several high profile stories criticizing his charging decision (even though the confession, if true, supported a capital charge).<sup>293</sup> There was no physical evidence linking Warney to the brutal murder.<sup>294</sup> Instead, virtually all of the physical evidence contradicted Warney's confession.<sup>295</sup> Warney confessed that he stabbed Beason in the kitchen, but Beason was found stabbed in his bedroom.<sup>296</sup> There was no blood in the kitchen.<sup>297</sup> Warney confessed that he cut his finger during a struggle with Beason and wiped his hand in the bathroom.<sup>298</sup> A medical examination shortly after Warney's arrest revealed no evidence of a cut,<sup>299</sup> and laboratory tests showed that the blood in the bathroom did not come from Warney or Beason.<sup>300</sup> The killer left a trail of blood at the scene, but none of the blood matched Warney's blood type.<sup>301</sup> Warney confessed that he threw his bloody

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* The murder of Michelle Garrett remains unsolved largely because Goshen Indiana police would first have to admit that they caused an innocent man to confess to his daughter's murder. See generally *id.*

<sup>289</sup> Dwyer, *Slay Confession*, *supra* note 55, at 8.

<sup>290</sup> *Id.*

<sup>291</sup> Dwyer, *State's Unjust Blood Lust*, *supra* note 55, at 6.

<sup>292</sup> Dwyer, *Slay Confession*, *supra* note 55, at 8.

<sup>293</sup> Telephone Interview with William Easton, Attorney, N.Y. Capital State Defender's Office (Apr. 21, 1997).

<sup>294</sup> Dwyer, *Slay Confession*, *supra* note 55, at 8.

<sup>295</sup> *Id.*

<sup>296</sup> Dwyer, *State's Unjust Blood Lust*, *supra* note 55, at 6.

<sup>297</sup> Herbert, *supra* note 4, at A5.

<sup>298</sup> Dwyer, *Slay Confession*, *supra* note 55, at 8.

<sup>299</sup> Herbert, *supra* note 4, at A5.

<sup>300</sup> Dwyer, *State's Unjust Blood Lust*, *supra* note 55, at 6.

<sup>301</sup> Dwyer, *Slay Confession*, *supra* note 55, at 8.



clothes into a garbage can outside his apartment, but the garbage contained no bloody clothing.<sup>302</sup> Warney confessed that he drove his brother's brown Chevy to the murder, but his brother had not owned a Chevy for six years and did not own a car at the time of the killing.<sup>303</sup> Nevertheless, a jury convicted Warney of second degree murder,<sup>304</sup> and the judge sentenced Warney to twenty-five years to life.<sup>305</sup>

### C. PROBABLE FALSE CONFESSIONS

#### 1. Tammy Lynn Harrison

In 1979, following several days of intensive interrogation by Duncanville, Texas police Lieutenant Robert Moore, Tammy Lynn Harrison, a seventeen-year-old, signed a confession to stabbing her mother to death.<sup>306</sup> Moore coerced Harrison's confession by repeatedly telling her that she would die in the electric chair if she did not confess.<sup>307</sup> There was no physical or other evidence connecting Harrison to the crime,<sup>308</sup> and she steadfastly maintained her innocence,<sup>309</sup> repudiating her post-admission narrative while making it.<sup>310</sup> After the trial judge ruled Harrison's confession inadmissible, the prosecutor dismissed all charges for lack of evidence.<sup>311</sup> Shortly after the confession was suppressed, the Duncanville Police Department fired Lieutenant Moore.<sup>312</sup>

#### 2. Barry Lee Fairchild

In 1983, Pulaski County, Arkansas sheriffs extracted a confession from Barry Lee Fairchild,<sup>313</sup> a mentally handicapped Af-

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<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> Interview with William Easton, *supra* note 293.

<sup>305</sup> *Man Sentenced for Killing Lover*, STATE NEWS SERVICE, Feb. 28, 1997.

<sup>306</sup> Hart, *supra* note 129, at 12-13.

<sup>307</sup> *Id.*

<sup>308</sup> Telephone Interview with Robert C. Hinton, Jr., Attorney (Apr. 15, 1997). See also Hart, *supra* note 129, at 12-13.

<sup>309</sup> Hart, *supra* note 129, at 12-13.

<sup>310</sup> *Id.* at 13 ("As she confesses, the girl interjects, 'I am [telling it], but I'm not believing it,' and 'I don't remember it, really. I don't even know if that's right; it's what I think.'").

<sup>311</sup> *Id.*

<sup>312</sup> Interview with Robert C. Hinton, Jr., *supra* note 308.

<sup>313</sup> PERSKE, *supra* note 3, at 102.

rican-American,<sup>314</sup> to participating as an accessory in the abduction, rape and murder of Majorie Mason.<sup>315</sup> There was no independent evidence connecting Fairchild to the crime;<sup>316</sup> in fact, blood, hair and semen failed to positively link Fairchild to the crime.<sup>317</sup> Fairchild maintained his innocence and insisted that he confessed only because Sheriff Tommy Robinson and Deputy Sheriff Larry Dill physically beat, assaulted, and threatened him.<sup>318</sup> Fairchild's videotaped confession statement shows him looking away from the camera and responding to the prompting of others in the room.<sup>319</sup> In 1990—seven years after Fairchild's conviction on capital murder charges—thirteen African-American men publicly disclosed that, like Fairchild, they too had been detained for questioning about the Mason murder and were tortured.<sup>320</sup> One of these men, Michael Johnson, reported that he heard sheriffs in the next room torture Fairchild

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<sup>314</sup> Forensic Evaluation of Professor Ruth Luckasson and Denis W. Keyes at 3 (Feb. 28, 1989) (on file with authors) ("On the Wechsler Adult Intelligence Scale-Revised, Fairchild demonstrated a Full Scale IQ of 61. These scores place him within the lowest 1% of the population. Fairchild has mental retardation.").

<sup>315</sup> *Confession at Gunpoint?*, *supra* note 10.

<sup>316</sup> Shortly after Fairchild's confession, police retrieved a watch similar to the one owned by the victim from Fairchild's sister. While the state offered this as corroboration of Fairchild's confession (which even the state acknowledged was, in part, not true), Fairchild testified at trial that he bought the watch from someone at a pool hall and sold it to his sister. See *Fairchild v. Norris*, 21 F.3d 799, 803 (8th Cir. 1994). In the end, the state conceded that without the confession the case against Fairchild simply would have fallen apart. *Confession at Gunpoint?*, *supra* note 10.

<sup>317</sup> See *Confession at Gunpoint?*, *supra* note 10. In addition, Fairchild's post-admission narrative contained several glaring errors of fact. For example, Fairchild told officers where he had thrown his gloves away, but they were unable to find them there. See *Fairchild v. Lockhart*, 744 F. Supp. 1429, 1521 (E.D. Ark. 1989). Fairchild also identified Harold Green as his accomplice, but Green was in Colorado when the crimes took place. See *Norris*, 21 F.3d at 813.

<sup>318</sup> *Confession at Gunpoint?*, *supra* note 10.

<sup>319</sup> *Id.* See also *Execution of Retarded Man is Fought*, N.Y. TIMES, Aug. 31, 1995, at B12.

<sup>320</sup> *Confession at Gunpoint?*, *supra* note 10. Despite the absence of the physical evidence that should have linked Fairchild to the crime if he were guilty, despite the factual inaccuracies in Fairchild's confession statements, and despite the highly questionable circumstances under which they were extracted, the courts repeatedly declared that Fairchild's confession was voluntary and reliable. See, e.g., *Fairchild v. Norris*, 869 F. Supp. 672, 690 (E.D. Ark. 1993) ("Mr. Fairchild's confessions were given voluntarily and the truth of the essential facts stated in those confessions cannot be doubted by any fair and objective person"), *rev'd*, 21 F.3d 799 (8th Cir. 1994). In fact, many people have doubted the validity of Fairchild's confession. See, e.g., *More Questions Than Facts*, ARK. DEMOCRAT-GAZETTE, Sept. 8, 1995, at B9; John Brummet, *The Fairchild Issues Won't Die*, ARK. DEMOCRAT-GAZETTE, Aug. 29, 1995, at B7; "Dear Colleague" Letter from Congressmen John Conyers, Jr. & Don Edwards, *Urgent!! Stop The Execution of an Innocent Man* (Sept. 21, 1993) (proclaiming Fairchild's innocence) (on file with authors); *Confession at Gunpoint?*, *supra* note 10; PERSKE, *supra* note 3, at 102-03.

into confessing.<sup>321</sup> Two former Pulaski County Sheriff Deputies, Frank Gibson and Calvin Rollins, have admitted that physical assault and abuse were common interrogation tactics at the time of Fairchild's arrest.<sup>322</sup> Nevertheless, all of Fairchild's legal appeals failed, and he was executed on August 31, 1995.<sup>323</sup>

### 3. Jane Bolding

In 1985, after twenty-three hours of continuous interrogation, Virginia police extracted a confession from nurse Jane Bolding to injecting two patients with fatal doses of potassium.<sup>324</sup> The prosecution charged her with three counts of first degree murder and seven counts of assault with intent to murder.<sup>325</sup> No credible evidence linked Bolding to the crimes.<sup>326</sup> The medical examiners had initially classified Bolding's patients as dying from natural causes.<sup>327</sup> The trial judge suppressed Bolding's confession and then acquitted her of all charges.<sup>328</sup> He wrote that, "the state at most has placed the defendant at the scene. . .

The state's reach exceeded its grasp. The evidence failed to supply the missing link that would tie the defendant to the criminal act."<sup>329</sup>

### 4. Delbert Ward

In 1990, New York State Police interrogated Delbert Ward, a fifty-nine-year-old illiterate and mentally handicapped farmer. Ward eventually signed a confession admitting that he had murdered his brother, William, by putting his hand over William's nose and mouth.<sup>330</sup> Ward reported that he had been in-

<sup>321</sup> *Confession at Gunpoint?*, *supra* note 10.

<sup>322</sup> *Id.* These admissions, in effect, corroborate the testimony of the 13 other African-American men who, like Fairchild, were tortured by Pulaski County Sheriffs in the Mason murder investigation—allegations that the courts had largely dismissed in finding that Fairchild's confessions were voluntary and reliable. *See, e.g., Fairchild v. Lockhart*, 979 F.2d 636 (8th Cir. 1992).

<sup>323</sup> *Arkansas Executes a Retarded Man for Murder*, N.Y. TIMES, Sept. 2, 1995, at A6.

<sup>324</sup> Keith Harrison, *Bolding: Defendant as Victim; Md. Nurse Tells of Trial, Earlier Traumas*, WASH. POST, June 23, 1988, at A1.

<sup>325</sup> *Id.*

<sup>326</sup> Ginsburg, *supra* note 125.

<sup>327</sup> Patch, *supra* note 126.

<sup>328</sup> Ginsburg, *supra* note 125.

<sup>329</sup> *Id.*

<sup>330</sup> *See PERSKE, supra* note 3, at 88-94; *see also WECHT, supra* note 135, at 238-62. Delbert Ward has an IQ of 69. *See WECHT, supra* note 135, at 255.

timidated into confessing,<sup>331</sup> and thereafter steadfastly maintained his innocence.<sup>332</sup> When the Assistant Medical Examiner of Onondaga County, Dr. Humphrey Germaniuk, filled out William Ward's death certificate and turned the body over to the funeral home, he did not believe that a homicide had occurred.<sup>333</sup> However, immediately after learning of Delbert Ward's confession, Dr. Germaniuk re-classified William Ward's death as a homicide.<sup>334</sup>

There was no credible evidence linking Delbert Ward to his brother's death. Instead, the evidence supported the conclusion that William Ward died of natural causes, not of asphyxiation. Four common and telltale signs that should have been present if William Ward had died of asphyxia were not there: (1) William Ward's nose and mouth were free of trauma or blood; (2) there was no evidence of regurgitation; (3) there was no thinning of the blood; and (4) there was not a bluish or purple appearance to the skin.<sup>335</sup> At the same time, William Ward's enlarged heart, clogged coronary and pulmonary arteries, and his fluid-filled lungs supplied clear evidence that he had died of natural disease.<sup>336</sup> Nevertheless, at trial, Dr. Germaniuk testified for the prosecution that William Ward died of asphyxiation,<sup>337</sup> while the forensic pathologist Dr. Cyril Wecht testified for the defense that William Ward died of natural causes.<sup>338</sup> After al-

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<sup>331</sup> PERSKE, *supra* note 3, at 90. See also *Face to Face with Connie Chung*, *supra* note 134. When asked at trial why he confessed, Ward responded: "They said if I cooperated it would go easier . . . so I said yes. It wasn't true. I was nervous and shook up. I hadn't eaten all day. I was tired. My brother had just passed away . . . I thought if I said yes, they would let me go home." WECHT, *supra* note 135, at 255.

<sup>332</sup> See generally PERSKE, *supra* note 3; WECHT, *supra* note 135.

<sup>333</sup> WECHT, *supra* note 135, at 223.

<sup>334</sup> *Id.*

<sup>335</sup> *Id.* at 245-48.

<sup>336</sup> As Dr. Cyril Wecht reports:

for one thing, the right lung weighed almost twice as much as the left, while the lower part of the left lung was covered with scar tissue that held it to the chest cavity. Most importantly, both lungs showed 'prominent arteriosclerotic plaques' of the pulmonary arteries—another sign of cardiopulmonary disease. Considered with the enlarged liver and spleen, this was clear evidence of congestion due to an inadequately functioning heart.

*Id.* at 247.

<sup>337</sup> *Id.* at 252-54.

<sup>338</sup> *Id.* at 256-60. Dr. Wecht argues that Dr. Germaniuk botched the initial autopsy; that he changed his initial report and the cause of death listed on the death certificate only after he learned that criminal charges would be brought against Delbert Ward (but before receiving results from William Ward's toxicology and microscopic examinations); that during his trial testimony Dr. Germaniuk misrepresented the meaning and significance of certain findings; that he provided factually incorrect tes-

most nine hours of deliberation, the jury acquitted Ward of murdering his brother.<sup>339</sup> Two days after the trial, the investigator who had elicited Ward's false confession "was reprimanded and ended up taking an early retirement in Florida."<sup>340</sup>

#### 5. *Luis Roberto Benavidez*

In 1992, in Simi Valley, California, Luis Roberto Benavidez confessed to the slaying of Marcos Anthony Scott more than two years earlier.<sup>341</sup> Benavidez claimed that he confessed only because his interrogators threatened to send his girlfriend to prison for the murder and place their two-year-old daughter in a foster home if he did not confess.<sup>342</sup> The police denied that they coerced Benavidez's confession,<sup>343</sup> and the judge ruled that the confession was admissible.<sup>344</sup> There was no credible evidence linking Benavidez to the crime, and the jury acquitted Benavidez of the murder charge.<sup>345</sup> The jury forewoman stated that "the prosecution did not prove that Roberto was the killer. We had to find corroborating evidence besides his confession that pointed to his guilt. . . . there was no separate evidence to substantiate the murder charge."<sup>346</sup>

#### 6. *Linda Stangel*

In 1995, Oregon State Police coerced Linda Stangel into confessing to shoving her boyfriend, David Wahl, off a trail 320 feet above the Oregon Coast.<sup>347</sup> After Wahl's death, Oregon State Police lured Stangel from her home state, Minnesota, back to Portland by secretly funding her trip (via Wahl's family) to at-

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timony; and that his testimony at trial was "intellectually dishonest." *Id.* at 249, 253-54.

<sup>339</sup> PERSKE, *supra* note 3, at 93; WECHT, *supra* note 135, at 260-62.

<sup>340</sup> WECHT, *supra* note 135, at 262.

<sup>341</sup> Lozano, *supra* note 4, at B5.

<sup>342</sup> *Id.*

<sup>343</sup> Carol Bidwell, *Murder Suspect's Bail Upheld; Defense Lawyer Says Confession is False*, L.A. DAILY NEWS, Apr. 11, 1992, at SV1.

<sup>344</sup> Carol Bidwell, *Judge Rules Man's Murder Confession Can Be Used In Trial*, L.A. DAILY NEWS, June 25, 1992, at SV5.

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> Suppression Hearing Testimony of Richard J. Ofshe, *State v. Stangel*, Nov. 12 & Dec. 9, 1996 (No. 96151205) (Clatsop County Cir. Ct., Astoria, Or.) (on file with authors).

tend Wahl's memorial service.<sup>348</sup> After Stangel arrived in Portland, the police transported her to the scene of the alleged crime, several hours away.<sup>349</sup> Knowing that Stangel was terrified of heights,<sup>350</sup> two detectives obliged her to walk up the narrow, steadily rising bluff trail from which they presumed her boyfriend had fallen. Stangel broke down in apparent fear of the cliff edge as they climbed the trail.<sup>351</sup> Despite considerable pressure from the police, Stangel maintained her innocence prior to being manipulated up the trail,<sup>352</sup> and consistently told police that she had last seen Wahl when he went off to take a walk along the coast.<sup>353</sup> To escape the immediate stress of the narrow and terrifying heights, Stangel confessed to accidentally pushing her boyfriend off the cliff.<sup>354</sup> The police elicited Stangel's confession not only by playing on her fear of heights, but also by using the *accident scenario* technique<sup>355</sup> to create the impression that her admission—to pushing Wahl off the cliff in a panic after he gave her a "joking, fake push"—carried no punishment.<sup>356</sup>

Yet there was no evidence linking Stangel to the crime. Stangel's several different accounts of her panic response were inconsistent with one another and all failed to describe physical circumstances that would have caused Wahl to fall from the cliff—even if Stangel had panicked and pushed him. Moreover, the state never produced any evidence that a crime occurred, since Wahl's body did not wash up for weeks,<sup>357</sup> and thus no

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<sup>348</sup> *Court TV to Air Live Coverage of Oregon v. Linda Jean Stangel*, BUS. WIRE (Jan. 7, 1997).

<sup>349</sup> Report of Detective Hampton of Or. State Police, June 24, 1996, 6-10 (No. 96151205) (on file with authors) [hereinafter Report of Detective Hampton].

<sup>350</sup> *Id.* at 12. See also Kate Freedlander, *Stangel Says Confessions Coerced*, OREGONIAN, Jan. 15, 1997, at B01.

<sup>351</sup> Report of Detective Hampton, *supra* note 349, at 13.

<sup>352</sup> *Id.* at 12.

<sup>353</sup> Freedlander, *supra* note 350, at B01.

<sup>354</sup> Report of Detective Hampton, *supra* note 349, at 13. See also Interview with Linda Stangel, in Astoria, Or. (Oct. 10, 1996).

<sup>355</sup> The *accident scenario* technique relies on communicating a promise of leniency for its efficacy and has been demonstrated to elicit false confessions. See Ofshe & Leo, *Social Psychology*, *supra* note 4, at 191-93, 206-07; Saul Kassin & Karylín McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 LAW & HUM. BEHAV. 233, 247-50 (1991).

<sup>356</sup> Freedlander, *supra* note 350, at B01.

<sup>357</sup> Kate Freedlander, *Defendant Found Boyfriend's Scream Annoying*, OREGONIAN, Jan. 11, 1997, at B05.



cause of death could be determined.<sup>358</sup> Based solely on the contents of her coerced and unreliable confession,<sup>359</sup> a jury convicted Stangel of second degree manslaughter,<sup>360</sup> and she was sentenced to more than six years in prison.<sup>361</sup>

IV. FALSE CONFESSIONS AND CASE OUTCOMES

A. DEPRIVATIONS OF LIBERTY AND MISCARRIAGES OF JUSTICE

Cases involving suspected or established false confessions typically result in some deprivation of the false confessor's liberty. The amount of deprivation may vary from a brief wrongful arrest and detention to lifelong incarceration or execution. The harms of false confessions can be measured by the amount of liberty deprived in each case. Table B1 summarizes the deprivations of liberty and miscarriages of justice associated with the sixty cases involved in this study. Each case outcome is classified into one of four categories (wrongful arrest/detention, wrongful prosecution, wrongful incarceration and wrongful execution) corresponding to the amount of harm done.

TABLE B1  
MAGNITUDE OF HARM RESULTING FROM FALSE CONFESSION

Degree of Deprivation of Liberty	Total	Percentage of Total Cases (60)
Arrest and Detention	5 <sup>362</sup>	8%
Prosecutions	26	43%
Dismissed Prior to suppression hearing	8 <sup>363</sup>	13%
Dismissed Post suppression/prior to trial	10 <sup>364</sup>	17%

<sup>358</sup> The Deputy State Medical Examiner found that the victim's injuries could have been caused either by a vehicle accident or by falling from a high place. See Kate Freedlander, *Mother Tells of Loud Arguments Between Son, Girlfriend*, OREGONIAN, Jan. 10, 1997, at D06.

<sup>359</sup> At the prosecutor's request, Stangel took a polygraph examination administered by a police agency in Minnesota. Although Stangel passed the examination, the judge refused to allow the polygraph result to be used at the suppression hearing. The police officers who elicited Stangel's confession did not take a polygraph examination. See Letter from David E. Knefelkamp, Bureau of Crim. Apprehension, St. Paul, Minn., to Dean Schroeder, Deputy Sheriff, Clatsop County Sheriff's Office, Astoria, Or. (Dec. 13, 1995) (on file with authors).

<sup>360</sup> Freedlander, *Stangel*, *supra* note 131, at A01.

<sup>361</sup> *Woman Sentenced in Fatal Push*, SEATTLE TIMES, Feb. 11, 1997, at B02.

<sup>362</sup> ID Nos.: 7, 8, 11, 15, 31.

<sup>363</sup> ID Nos.: 3, 13, 14, 17, 18, 25, 57, 59.

<sup>364</sup> ID Nos.: 1, 5, 16, 21, 23, 28, 29, 37, 49, 56.

Dismissed Acquitted at trial	8 <sup>365</sup>	13%
Convictions	29	48%
Vacated by Judge prior to sentence	1 <sup>366</sup>	2%
Defendant sentenced to: <sup>367</sup>		
5-9 Years	3 <sup>368</sup>	5%
>10 Years	10 <sup>369</sup>	17%
Life Imprisonment	11 <sup>370</sup>	18%
Death Sentence	3 <sup>371</sup>	5%
Executed	1 <sup>372</sup>	2%

## B. CLASSIFYING CASE OUTCOMES

In general, false confession cases can be usefully divided into two categories: those that result in pre-trial deprivations of liberty (Type I cases); and those that result in miscarriages of justice and wrongful deprivation of many years of liberty and/or of life (Type II cases). Type I cases occur when police, prosecutors, trial judges or juries correct the initial error of relying on a questionable confession. There are multiple points in the trial process at which the criminal justice system has the potential to be self-correcting. Indeed, the rules of American criminal procedure are structured to allocate the risk of error so as to minimize the possibility of convicting the innocent.

### 1. *Type I Cases: False Confessions That Do Not Lead to Conviction (52%)*

#### a. General

Sometimes police extract a confession from an innocent suspect that they initially believe to be true, but either they or the prosecutors realize is false before the filing of charges. In other instances, police and prosecutors realize that an innocent suspect has confessed because it is physically impossible for the suspect to have committed the crime. Sometimes officials do not come to the realization that the confession is false until after another suspect has confessed to the crime. And sometimes po-

<sup>365</sup> ID Nos: 2, 35, 38, 40, 52, 53, 54, 60.

<sup>366</sup> ID No.: 4.

<sup>367</sup> In the few cases involving an indeterminate sentence, the upper limit of the sentence was chosen.

<sup>368</sup> ID Nos.: 9, 47, 58.

<sup>369</sup> ID Nos.: 10, 12, 19, 24, 27, 30, 32, 36, 43, 51.

<sup>370</sup> ID Nos.: 6, 20, 22, 26, 34, 39, 41, 45, 46, 48, 50.

<sup>371</sup> ID Nos.: 33, 42, 44.

<sup>372</sup> ID No.: 55.

lice and prosecutors never come to this realization even though the confession is demonstrably not true (i.e., contradicts the known facts of the crime).

The Type I false confession cases described above include: Billy Gene Davis' confession that he killed his ex-girlfriend (who turned up alive);<sup>373</sup> Ruben Trujillo's,<sup>374</sup> Pedro Delvillar's,<sup>375</sup> Jose Soto Martinez's<sup>376</sup> and Ivan Reliford's<sup>377</sup> confessions to crimes which were committed when all were in custody; Christina Mason's confession to killing her child, who died of natural causes;<sup>378</sup> and Martin Salazar's confession to a crime that scientific evidence proved he did not commit.<sup>379</sup>

#### b. Confessions From The True Perpetrator

Often police or prosecutors only discover and acknowledge their error in eliciting a false confession or charging an innocent defendant prior to conviction because they have accidentally or unintentionally obtained a reliable confession from the true perpetrator(s) of the crime.<sup>380</sup> Several such cases described above include: Paul Reggetz, who was cleared of murdering his wife when a neighbor confessed to the crime;<sup>381</sup> Anthony Atkinson, who confessed to murder and sodomy but was released when two other men confessed to the crime;<sup>382</sup> Guy Lewis, who confessed to killing his girlfriend, but was released when the real killers confessed;<sup>383</sup> Robert Moore, whose confession to capital murder and robbery was disregarded when the true killer confessed and identified his two co-perpetrators;<sup>384</sup> and Donald Shoup, whose capital murder charges were dropped after the true killer confessed.<sup>385</sup>

<sup>373</sup> Phillips, *supra* note 4, at B3.

<sup>374</sup> See Feldman, *supra* note 44, at B1.

<sup>375</sup> See *id.*

<sup>376</sup> See Granberry, *supra* note 4, at A1.

<sup>377</sup> See Nathan, *supra* note 62, at 1.

<sup>378</sup> See Rossmiller & Creno, *supra* note 4, at B4.

<sup>379</sup> Ofshe & Leo, *Social Psychology*, *supra* note 3.

<sup>380</sup> Many miscarriages of justice appear to be discovered by confessions from the true perpetrator. See generally Samuel Gross, *The Risks of Death: Why Erroneous Convictions are Common in Capital Cases*, 44 BUFF. L. REV. 469 (1996); Samuel Gross, *Loss of Innocence: Eyewitness Identification and Proof of Guilt*, 16 J. LEGAL STUD. 395 (1987).

<sup>381</sup> See generally YANT, *supra* note 3.

<sup>382</sup> See Colwell, *supra* note 4, at 23.

<sup>383</sup> Perrusquia, *supra* note 4, at A1.

<sup>384</sup> Herbert, *supra* note 4, at A5.

<sup>385</sup> Holland, *supra* note 4, at 1A.

c. Prosecutorial Intervention

Though it appears to happen relatively infrequently, prosecutors sometimes drop charges against a defendant who has confessed because the confession does not match the facts of the crime and the prosecutor thus recognizes that it is of no evidentiary value. In 1991, Snohomish County, Washington prosecutors dropped charges against Charles Lawson when they realized that Lawson had wrongly reported many of the crucial facts in his confessions to two separate murders.<sup>386</sup> Similarly, in 1994 prosecutors in Louisiana dismissed second degree murder charges against Cyril Walton after realizing that many of the details in his confession simply did not fit the facts of the crime.<sup>387</sup>

d. Judicial Suppression

Sometimes prosecutors are forced to drop charges after a judge suppresses a confession because there is no physical or even uncompromised testimonial evidence to implicate the defendant. In 1983, using a guided visualization and relaxation based hypnotic induction, Wheeling, Illinois police elicited from fourteen-year-old William Boyd a confession to murdering a schoolmate.<sup>388</sup> Although bite marks on the victim's body did not match Boyd's teeth, prosecutors charged him with murder.<sup>389</sup> After a Cook County Circuit Court judge suppressed Boyd's confession, prosecutors dismissed charges.<sup>390</sup> Similarly, in the Sawyer case,<sup>391</sup> Florida prosecutors dismissed charges after the trial judge suppressed Tom Sawyer's grossly inaccurate confession.<sup>392</sup>

Though judges can prevent Type I cases from developing into Type II cases if they suppress the confession prior to trial,<sup>393</sup> they may also vacate a conviction both prior to and after sentencing. This happened to the charges against Lavale Burt in

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<sup>386</sup> Houtz, *supra* note 4, at B1.

<sup>387</sup> Darby, *supra* note 4, at B2.

<sup>388</sup> Drell, *supra* note 92, at 11.

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> See *supra* notes 204-11 and accompanying text.

<sup>392</sup> See *State v. Sawyer*, 561 So. 2d 278 (Fla. Dist. App. Ct. 1990).

<sup>393</sup> In all sixty cases documented in this article judicial suppression of the confession would almost certainly have caused the prosecutor to dismiss all charges against the defendant because in each of these cases no credible evidence linked the suspect to the crime and varying amounts of evidence indicated that the suspect was factually innocent.

1985. Chicago, Illinois police extracted a confession from Burt after slapping him around, threatening him with the death penalty, and fabricating evidence of his guilt.<sup>394</sup> A jury subsequently convicted Burt. Between his conviction and sentencing, however, the grandmother of the murder victim contacted the judge and provided new evidence showing that Burt was not the killer, causing the trial judge to vacate his conviction.<sup>395</sup> Similarly, a judge in Montgomery, Alabama vacated Melvin Beamon's 1989 murder conviction (and twenty-five-year prison sentence) after an eyewitness to the crime came forward and exonerated him.<sup>396</sup> Beamon had confessed after seventeen hours of interrogation, during which Montgomery, Alabama police beat and threatened to shoot him.<sup>397</sup>

#### e. Jury Acquittals

If police fail to detect that a confession is unreliable, prosecutors fail to dismiss charges and the judge fails to suppress the confession,<sup>398</sup> the defendant may still be able to persuade a jury of his innocence. Though juries tend to regard confessions as the most probative and damning evidence of guilt possible,<sup>399</sup> they sometimes acquit defendants who have confessed falsely.<sup>400</sup> For example, in 1986 after almost ten hours of interrogation,<sup>401</sup> police in Flagstaff, Arizona extracted a highly probable false confession to a Navajo ritual slaying from George Abney in a recorded interrogation.<sup>402</sup> At trial, the defense presented Abney's unimpeachable alibi, identified the likely killer and analyzed the

<sup>394</sup> Warden, *supra* note 4, at 42-46. See also RADELET ET AL., *supra* note 9, at 292.

<sup>395</sup> Warden, *supra* note 4, at 42-46; RADELET ET AL., *supra* note 9, at 292.

<sup>396</sup> RADELET ET AL. *supra* note 9, at 292.

<sup>397</sup> *Id.*

<sup>398</sup> In some cases a judge may not be provided with sufficient evidence to warrant suppressing the confession. For example, if the interrogation is not recorded, a defendant may not be able to overcome a police officer's perjured testimony denying the use of coercive interrogation techniques and strategies. See *Stephan v. State*, 711 P.2d 1156 (Alaska 1985).

<sup>399</sup> See generally G.R. Miller & F.J. Boster, *Three Images of the Trial: Their Implications for Psychological Research*, in *PSYCHOLOGY IN THE LEGAL PROCESS* 19 (B. Sales ed., 1977).

<sup>400</sup> This appears to be especially true if juries are educated about the social psychology of American interrogation practices and are shown precisely how a particular interrogation affected the defendant's decision to confess. See *United States v. Hall*, 93 F.3d 1337, 1343-44 (7th Cir. 1996) (reversing district court exclusion of expert testimony by Richard Ofshe on the phenomenon of false confessions).

<sup>401</sup> Interrogation Transcripts of George Abney, Flagstaff, Ariz. Police Dep't (Aug. 28-Sept. 1, 1987) (on file with authors).

<sup>402</sup> Ofshe, *Coerced Confessions*, *supra* note 90, at 6.

interrogation for the jury—who acquitted Abney.<sup>403</sup> In 1993, Mesa, Arizona police interrogators elicited a highly probable false confession to sexual assault of a minor from Dale Zamarrippa. Zamarrippa was also eventually acquitted by a jury.<sup>404</sup> In 1997, a jury in Juneau, Alaska acquitted Richard Bingham of first degree murder and sexual assault.<sup>405</sup> Not only did Bingham's confession contradict the facts of the crime, but a spot of blood found on one of Bingham's sneakers was not the victim's and the semen found on the victim's body was not Bingham's.<sup>406</sup> In 1989, a Minneapolis, Minnesota jury did not merely acquit Betty Burns of the attempted murder to which she had confessed, but took the additional unusual step of publishing a thirteen page letter denouncing the interrogation of Burns, expressing alarm that the true perpetrator remained at large, calling for reforms both in the police and prosecutors' offices, and requesting that Burns' record be expunged and she be compensated for her ordeal.<sup>407</sup>

2. *Type II Cases: False Confessions That Lead to Wrongful Conviction and Imprisonment (48%)*

a. General

Type II cases are those in which miscarriages have occurred and the justice system has clearly failed: not only have innocent individuals been made to confess to crimes they did not commit, but they have also been wrongly prosecuted, convicted, and imprisoned. False confessions may lead to wrongful conviction either when a suspect pleads guilty to avoid an anticipated harsher punishment or when a judge or jury convicts at trial. The frequency of miscarriages among the sixty false confession cases studied is reported in Table B2. Following Type II errors, some suspects are eventually released and exonerated; some are released after serving a prison term but are never exonerated; and some false confessors are sentenced to life terms and remain incarcerated to this day. Several false confessors in this

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<sup>403</sup> *Id.*

<sup>404</sup> See Thomas, *supra* note 4, at 133.

<sup>405</sup> *Lack of Evidence*, *supra* note 4, at B4.

<sup>406</sup> *Id.*

<sup>407</sup> The victim of this brutal stabbing, as well as three eyewitnesses, testified that Burns did not commit the crime. See Siegel, *Outraged Jury*, *supra* note 93, at A1; Siegel, *A Peek at Back Alley Justice*, *supra* note 4, at A1.



study were sentenced to death, and in one case the defendant was executed.

Confession evidence is sufficient to produce wrongful arrests, convictions and incarceration. In practice, criminal justice officials and lay jurors often treat confession evidence as dispositive, so much so that they often allow it to outweigh even strong evidence of a suspect's factual innocence. All of the police-induced false confessions documented here resulted in some deprivation of liberty. Fifty-two percent of the false confessors' wrongful deprivation of liberty ended before conviction, while 48% of the defendants suffered miscarriages of justice.

TABLE B2  
THE RISK OF MISCARRIAGE ATTRIBUTABLE  
TO FALSE CONFESSION<sup>408</sup>

Outcome of Confessor's Decision to go to trial	Number of Cases	Risk of a Miscarriage
Released prior to decision point	23	-
Pled Guilty	7 <sup>409</sup>	12%
Acquitted at Trial	8 <sup>410</sup>	-
Convicted at Trial	22 <sup>411</sup>	36%

b. Plea Bargains

If it seems counter-intuitive that an innocent person would confess falsely, the specter of an innocent false confessor pleading guilty seems fantastic. Yet this is not uncommon.<sup>412</sup> As Table B2 indicates, in 12% (7) of the cases reported here, the false

<sup>408</sup> These data do not represent a statistically meaningful sample of false confessions since they were not randomly selected from a definable universe of cases. It is likely that these cases overrepresent certain categories: (1) famous cases; (2) recent cases; and (3) cases in which one or both of the authors have consulted.

<sup>409</sup> ID Nos.: 9, 10, 30, 32, 34, 39, 43.

<sup>410</sup> ID Nos.: 2, 35, 38, 40, 52, 53, 54, 60.

<sup>411</sup> ID Nos.: 4, 6, 12, 19, 20, 22, 24, 26, 27, 33, 36, 41, 42, 44, 45, 46, 47, 48, 50, 51, 55, 58.

<sup>412</sup> Radelet, Bedau and Putnam document nearly 20 cases in which individuals entered guilty pleas to capital (or potentially capital) crimes of which they were entirely innocent. RADELET ET AL., *supra* note 9. See also Hugo Adam Bedau & Constance Putnam, *False Confessions and Other Follies*, in CONNERY, *supra* note 3, at 69.

confessor chose to plead guilty to avoid an anticipated harsher punishment—typically the death penalty.

*i. Jack Carmen*

In 1975 Jack Carmen, a mentally retarded twenty-six-year-old, confessed to the kidnapping, rape and murder of a fourteen-year-old girl in Columbus, Ohio.<sup>413</sup> Though there was no evidence against Carmen and three eyewitnesses placed him elsewhere at the time of murder, Carmen pled guilty to the crime to avoid the death penalty.<sup>414</sup> Instead he was sentenced to life in prison.<sup>415</sup> Two years later, an appellate court judge nullified Carmen's conviction, and he was subsequently acquitted in a jury trial.<sup>416</sup>

*ii. David Vasquez*

In 1984, David Vasquez, who is also mentally retarded,<sup>417</sup> confessed three times<sup>418</sup> and subsequently pled guilty to the murder of Carolyn Hamm, for which he was sentenced to thirty-five years in prison.<sup>419</sup> In Vasquez's case, the police also subsequently identified the true murderer, a serial killer,<sup>420</sup> and Vasquez was released from prison after serving almost five years of his sentence.<sup>421</sup>

*iii. Johnny Lee Wilson*

Vasquez was fortunate compared to Johnny Lee Wilson, another mentally retarded adult.<sup>422</sup> In 1986, Aurora, Missouri police induced Wilson to confess to murder and arson.<sup>423</sup> Wilson pled guilty to first degree murder to avoid the death penalty and instead was sentenced to life in prison without the possibility of

<sup>413</sup> RADELET ET AL., *supra* note 9, at 173.

<sup>414</sup> *Id.* at 173-74.

<sup>415</sup> *Id.* at 174.

<sup>416</sup> *Id.* The judge found Carmen mentally incompetent to plead or waive his rights prior to trial. See also Harry Franken, *Carmen Cleared in Slaying; O'Grady: Case Now Closed*, COLUMBUS CITIZEN-JOURNAL, Dec. 20, 1977, at 1.

<sup>417</sup> MONES, *supra* note 4, at 295.

<sup>418</sup> *Id.* at 56.

<sup>419</sup> *Id.* at 62.

<sup>420</sup> DOUGLAS & OLSHAKER, *supra* note 84, at 327-33.

<sup>421</sup> See Carolyn Click, *General Assembly Compensates Wrongly Jailed Man*, UNITED PRESS INT'L, Mar. 7, 1990.

<sup>422</sup> See Ofshe & Leo, *Social Psychology*, *supra* note 4, at 222-26.

<sup>423</sup> *Id.*

parole for fifty years.<sup>424</sup> Although in 1988 the true killer confessed and provided officials with details of the crime that only the perpetrator would know, Wilson was not released from prison until 1995—more than eight years after his conviction, when the Governor of Missouri pardoned him.<sup>425</sup>

*iv. Paul Ingram*

In 1988, police in Olympia, Washington extracted from Paul Ingram a highly probable false confession to numerous fictitious crimes<sup>426</sup>—including sexually molesting his two daughters,<sup>427</sup> supervising the gang rape and bondage of his daughters and wife on numerous occasions,<sup>428</sup> and being a demon-possessed member of a satanic cult<sup>429</sup> that allegedly committed murders,<sup>430</sup> performed coathanger abortions,<sup>431</sup> signed loyalty oaths in blood,<sup>432</sup> engaged in bestiality,<sup>433</sup> and dismembered, sacrificed and cannibalized small children.<sup>434</sup> The prosecution was able to save face by getting Ingram to enter a guilty plea to six counts of third degree rape.<sup>435</sup> Though the sensational and bizarre circumstances of Paul Ingram's case remain unique in the annals of American interrogation history, the outcome of his case is not. Despite compelling evidence that his guilty plea was predicated upon a false confession,<sup>436</sup> Ingram remains incarcerated.<sup>437</sup>

<sup>424</sup> *Id.* at 225-26.

<sup>425</sup> *Id.* at 226.

<sup>426</sup> Ofshe, *Inadvertent Hypnosis*, *supra* note 4.

<sup>427</sup> Interrogation Transcript of Paul Ingram, Thurston County Wash. Sheriff's Office at 2-12 (Nov. 28, 1988) (on file with authors). See also Ofshe, *Inadvertent Hypnosis*, *supra* note 4 at 139-49.

<sup>428</sup> Interrogation Transcript of Paul Ingram, *supra* note 427, at 8-81.

<sup>429</sup> Ofshe, *Inadvertent Hypnosis*, *supra* note 4, at 139-49.

<sup>430</sup> *Id.* at 137-38.

<sup>431</sup> *Id.* at 136.

<sup>432</sup> LAWRENCE WRIGHT, REMEMBERING SATAN: A CASE OF RECOVERED MEMORY AND THE SHATTERING OF AN AMERICAN FAMILY 104 (1994).

<sup>433</sup> *Id.* at 116-17.

<sup>434</sup> Ofshe, *Inadvertent Hypnosis*, *supra* note 4, at 136, 138; see also WRIGHT, *supra* note 432, at 110-11.

<sup>435</sup> WRIGHT, *supra* note 432, at 184.

<sup>436</sup> See Ofshe, *Inadvertent Hypnosis*, *supra* note 4, at 136-39.

<sup>437</sup> In May, 1990 Ingram was sentenced to twenty years in prison. See *id.* at 134. State and federal courts have rejected Ingram's appeal to withdraw his guilty plea on five occasions, and the Washington State Clemency and Pardons Board recently rejected Ingram's bid for clemency. See Brad Shannon, *Judges Reject Ingram's Guilty Plea Withdrawal*, OLYMPIAN, July 6, 1995, at C01; Hunter T. George, *Ex-Lawman Ingram Hopes for Mercy from Lowry*, NEWS TRIBUNE, Dec. 14, 1996, at A1.

*v. William Kelley*

In 1990 William Kelley, a mentally handicapped adult,<sup>438</sup> confessed and then pled guilty to the murder of a twenty-five-year-old woman whose body was found in a landfill.<sup>439</sup> He was sentenced to ten to twenty years in prison but was released two years later when the police in Dauphin County, Pennsylvania stumbled upon the true perpetrator,<sup>440</sup> a serial killer,<sup>441</sup> who confessed to the crime.<sup>442</sup>

*vi. Christopher Smith and Ralph Jacobs*

In 1991 Christopher Smith and Ralph Jacobs, also mentally handicapped adults, both falsely confessed, and pled guilty to, the murder of a New Castle, Indiana drug dealer.<sup>443</sup> Smith was sentenced to thirty-eight years and Jacobs to eight.<sup>444</sup> Both had served eighteen months in prison when police arrested the true killer, who was linked to the crime by physical evidence (unlike Smith and Jacobs) and eventually convicted.<sup>445</sup>

c. Jury Convictions

*i. General*

The history of criminal justice in America prior to the *Miranda* decision is replete with instances of juries convicting innocent defendants who were linked to the crime only by a false confession.<sup>446</sup> Despite additional safeguards, police continue to elicit false confessions in the post-*Miranda* era, and juries continue to convict false confessors at an alarmingly high rate. Tables B3 and B4 report the defendant's risk of conviction at trial when police have elicited a false confession. Even an unsupported and disconfirmed confession is often sufficient to lead a trier of fact to judge the defendant guilty beyond a reasonable doubt. As Table B3 indicates, the thirty false confessors

<sup>438</sup> Shellem, *Jailed Man Set Free*, *supra* note 4, at A1.

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

<sup>441</sup> Pete Shellem, *Miller Pleads Guilty in Rape of City Woman; Attack Led to his Capture*, HARRISBURG PATRIOT, Mar. 10, 1993, at B1.

<sup>442</sup> Shellem, *Jailed Man Set Free*, *supra* note 4, at A1.

<sup>443</sup> Booher, *supra* note 4, at C1.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> See BORCHARD, *supra* note 3, at 367-78; FRANK & FRANK, *supra* note 3, at 199-249; RADIN, *supra* note 3, at 239-56; RADELET ET AL., *supra* note 9, at 282-356.

whose cases proceeded to trial had a 73% chance of being convicted. Despite the absence of any physical or other significant credible evidence corroborating a confession, a false confessor was approximately three times more likely to be found guilty at trial than to be acquitted (73% vs. 27%). These data demonstrate that a false confession is an exceptionally dangerous piece of evidence to put before a jury even when the other case evidence weighs heavily in favor of the defendant's innocence.

Tables B4 and B5 reveal the fate of those identified as false confessors while controlling for the basis on which the identification was made. Defendants were identified as false confessors based either on evidence that objectively proved their innocence or supported the inference that they were innocent. While the information reported in Table B4 indicates moderate percentage differences between outcomes for persons *proven* or *classified* (i.e., highly probable and probable) as false confessors, the differences are minor in light of the relatively small number of cases presently available for comparison. The false confession cases documented here produce a generally consistent outcome, whether the false confessor's innocence is proven or classified as highly probable or probable.

Not surprisingly, the false confessors who are ever going to be *proven* innocent are likely to have this proof come to light shortly after their confession. Slightly over half (53%) of the proven false confessors have charges dismissed prior to trial, while 47% of proven false confessors must make a decision about pleading to an offer of lesser punishment or undergoing trial. The high percentage of pre-trial dismissals is likely due to proof of a confessor's innocence coming to light early in the pre-trial discovery process (e.g., when scientific test results become available) or when the defense establishes the defendant's alibi (e.g., the alibi the police ignored when the defendant offered it during interrogation) or for other strong reasons (e.g., the victim turns up alive).

Absent the discovery of evidence dispositively proving the defendant's innocence, only 19% of defendants classified as *highly probable* or *probable* false confessors are spared having to choose to undergo trial or to plead guilty. The vast majority (81%) of these false confessors find themselves having to choose either to plead guilty to a crime they did not commit or go to trial and risk the harshest possible punishment.

TABLE B3  
THE RISK OF MISCARRIAGE OF JUSTICE AT TRIAL  
GIVEN A FALSE CONFESSION<sup>447</sup>

Outcome of Confessor's Decision to go to Trial	Number	Verdict of Guilt	Verdict of Innocent
All False Confessors	30	73% <sup>448</sup>	27% <sup>449</sup>

TABLE B4  
THE RISK OF MISCARRIAGE OF JUSTICE  
GIVEN A PROVEN FALSE CONFESSION

Proven False Confessors (N=34)	Number (%)	Likelihood of Miscarriage	Risk of a Guilty Verdict
Released Prior to Decision Point	18 <sup>450</sup> (53%)	-	-
Pled Guilty	5 <sup>451</sup> (15%)	15%	-
Acquitted at Trial	1 <sup>452</sup> (3%)	-	-
Convicted at Trial	10 <sup>453</sup> (29%)	29%	90%
<i>Totals</i>	34 (100%)	44%	

<sup>447</sup> It seems likely that in more recent cases, a defendant has a better chance of pre-trial dismissal of charges or acquittal at trial because of advances in scientific technology, the increasing use of audio and video recording during interrogation, and the increasing ability of defense attorneys to explain false confessions at trial.

<sup>448</sup> ID Nos. 4, 6, 12, 19, 20, 22, 24, 26, 27, 33, 36, 41, 42, 44, 45, 46, 47, 48, 50, 51, 55, 58.

<sup>449</sup> ID Nos. 2, 35, 38, 40, 52, 53, 54, 60.

<sup>450</sup> ID Nos. 1, 3, 5, 7, 8, 11, 13, 14, 15, 16, 17, 18, 21, 23, 25, 28, 29, 31.

<sup>451</sup> ID Nos. 9, 10, 30, 32, 34.

<sup>452</sup> ID No. 2.

<sup>453</sup> ID Nos. 4, 6, 12, 19, 20, 22, 24, 26, 27, 33.



TABLE B5  
THE RISK OF MISCARRIAGE OF JUSTICE  
GIVEN LIKELY FALSE CONFESSION

Proven False Confessors (N=34)	Number (%)	Likelihood of Miscarriage	Risk of a Guilty Verdict
Released Prior to Decision Point	5 <sup>454</sup> (19%)	-	-
Pled Guilty	2 <sup>455</sup> (8%)	8%	-
Acquitted at Trial	7 <sup>456</sup> (27%)	-	37%
Convicted at Trial	12 <sup>457</sup> (46%)	46%	63%
Totals	26 (100%)	54%	

As reported in Table B3, there is a strong likelihood that a miscarriage of justice will occur if a false confessor undergoes a trial. It is alarming that about three-quarters (73%) of all false confessors who went to trial were convicted. Table 4 reports that when *proven* and *classified* confession cases (i.e., *highly probable* + *probable*) are separated there is a 27% higher level of risk of conviction at trial for those whose innocence will be proven much later. Further, while 63% of the *classified* false confessors are convicted at their trials, 90% of the defendants who would someday be *proven* innocent are convicted when their false confessions are brought into court.

If tried, 37% of those *classified* as false confessors are acquitted, while only 10% of those belatedly *proven* innocent are acquitted. It appears that at the time of trial the exculpatory evidence favoring those who were destined to someday be *proven* innocent was weaker than the exculpatory evidence supporting those who even today can only be *classified* as false confessors. Some of those who were later *proven* to be false confessors were only saved from their sentences of execution or life imprison-

<sup>454</sup> ID Nos. 37, 49, 56, 57, 59.  
<sup>455</sup> ID Nos. 39, 43.  
<sup>456</sup> ID Nos. 35, 38, 40, 52, 53, 54, 60.  
<sup>457</sup> ID Nos. 36, 41, 42, 44, 45, 46, 47, 48, 50, 51, 55, 58.

ment by new scientific developments such as DNA analysis or a true perpetrator's long-delayed decision to confess.<sup>458</sup>

*ii. Case Illustrations*

*a. Officially Exonerated After Conviction*

The list of false confessors wrongfully convicted by juries is long. After Bradley Cox confessed to two rapes, he was convicted by a jury in 1980 and sentenced to fifty to 200 years in prison based on a now-proven false confession.<sup>459</sup> He served nearly two years before the true perpetrator confessed.<sup>460</sup> The so-called "dream confession" Chicago, Illinois police obtained from Steven Linscott<sup>461</sup> was later proven false.<sup>462</sup> Based on this so-called confession, a jury convicted Linscott of murder, and a judge sentenced him to forty years in prison.<sup>463</sup> In 1983, Fort Lauderdale, Florida police extracted a false confession to double murder from John Purvis,<sup>464</sup> a mentally handicapped adult.<sup>465</sup> A jury convicted Purvis,<sup>466</sup> and the judge sentenced him to life in prison plus two twenty-year terms.<sup>467</sup> When the actual killers were caught, Purvis was released after nine years of incarceration.<sup>468</sup>

In 1979 in Saint Joseph, Missouri, Melvin Lee Reynolds, another mentally handicapped adult,<sup>469</sup> falsely confessed to the abduction and murder of a four-year-old boy<sup>470</sup> after nearly thirteen hours of interrogation.<sup>471</sup> A jury convicted Reynolds of second degree murder and sentenced him to life in prison.<sup>472</sup>

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<sup>458</sup> See CONNORS ET AL., *supra* note 4, at 34-76.

<sup>459</sup> HUFF ET AL., *supra* note 3, at 123, 127, 136-37.

<sup>460</sup> *Id.* at 137.

<sup>461</sup> Interrogation Transcript of Steve Linscott, Oak Park, Ill. Police Dep't (Oct. 8, 1980).

<sup>462</sup> CONNORS ET AL., *supra* note 4, at 64-65.

<sup>463</sup> LINSCHOTT, *supra* note 4, at 208.

<sup>464</sup> DAVIS, *supra* note 4, at 79-99.

<sup>465</sup> *Id.* at 60.

<sup>466</sup> *Id.* at 161.

<sup>467</sup> *Id.* at 164.

<sup>468</sup> *Man Imprisoned 9 Years in Killing is Freed as 2 Suspects are Found*, N.Y. TIMES, Jan. 17, 1993, at 26.

<sup>469</sup> GANEY, *supra* note 5, at 34.

<sup>470</sup> *Id.* at 39-44.

<sup>471</sup> *Id.* at 43.

<sup>472</sup> *Id.* at 69-70.

Reynolds was released from prison four years later when the true perpetrator, a serial murderer who had killed several more victims after Reynolds' erroneous conviction,<sup>473</sup> contacted

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<sup>473</sup> Reynolds's interrogation and prosecution illustrates the potentially tragic consequences of police and prosecutorial negligence in false confession cases. Under considerable pressure to solve the murder of four-year-old Eric Christgen, St. Joseph police relied on a FBI profile of the killer to round up 150 suspects. *Id.* at 26. One of the suspects they interrogated was Harry Fox, a likeable 64-year-old janitor with no prior record. *Id.* at 26-27. Thirty minutes into his accusatorial interrogation, Fox experienced convulsions, fell over in his chair, turned colors, collapsed onto the floor and died of a heart attack—killed by interrogation. *Id.* at 28. There was never any evidence against Fox, and his innocence would later be conclusively established.

St. Joseph police then decided to interrogate Reynolds, even though Reynolds did not match the description eyewitnesses provided of the killer and an alibi witness had seen and spoken to Reynolds at his home at the time of the murder. Undeterred by evidence of Reynolds' innocence and an absence of any basis for suspicion, police interrogated Reynolds nine times between June 2, 1978 and February 14, 1979 (once after hypnotizing him and another time after injecting him with a truth serum). *Id.* at 37-38. Reynolds finally confessed to accidentally killing Christgen and provided a written statement that parroted back many of the words, terms and phrases that his interrogators had used in their questioning. *Id.* at 39-41. Not surprisingly, Reynolds got several of the major case facts wrong (e.g., the timing of the child's disappearance, the spot where the body had been found). *Id.* at 41-44.

Following his confession to the Christgen killing, Reynolds was made to confess to a similar child murder in Kansas City. *Id.* at 50-51. The Kansas Bureau of Investigation promptly discounted the confession as false because of the factual inconsistencies and errors in Reynolds's account of the crime. *Id.* at 51. Shortly afterwards, Reynolds recanted his confession to the Christgen murder and declared that he confessed falsely because he was frightened by his interrogators and desperately sought to escape the intolerable pressure of the interrogation. *Id.* at 51-54. Throughout this entire ordeal, Reynolds maintained his innocence.

Despite the absence of any evidence confirming Reynolds's questionable confession and the presence of evidence disconfirming it (e.g., Reynolds did not match the description of eyewitnesses), prosecutors brought Reynolds to trial, the judge declared Reynolds's confession voluntary, the jury convicted him of second degree murder and sentenced him to life in prison. *Id.* at 59-70. Shortly thereafter, Reynolds was repeatedly gang-raped and beaten by inmates in prison, where he feared for his life. *Id.* at 71-75. During Reynolds's four years in prison, the real murderer of Eric Christgen, a psychotic serial killer named Charles Hatcher, attempted to abduct, assault, rape and kill on several occasions. *Id.* at 235-36. Tragically, Hatcher stabbed 38-year-old James Churchill to death in 1981 and in 1982 abducted and killed 11-year-old Michelle Steele, who, like Christgen, lived in St. Joseph. *Id.* at 236.

Eventually Hatcher confessed to many of his crimes, including the abduction and murder of both Christgen and Steele. *Id.* at 141-201. Though Hatcher's confession included details no one else knew and though Hatcher matched the description of the adult male seen with Christgen shortly before his abduction, Reynolds's prosecutors initially denied that Reynolds could be innocent. *Id.* at 167-83. Eventually they grudgingly conceded Reynolds's innocence and their wrongful prosecution. *Id.* at 184. Yet the chief of the St. Joseph Police Department continued to insist that Reynolds killed Christgen. *Id.* at 185, 207. Hatcher was convicted of Christgen's murder, and Reynolds was eventually declared innocent and released from prison. *Id.* at 193-205.

If St. Joseph police had not extracted an obviously false confession from a vulnerable individual and if prosecutors had not prosecuted an innocent defendant based

authorities and confessed to the crime.<sup>474</sup> George Parker falsely confessed to Howell Township, New Jersey police in 1980;<sup>475</sup> a jury convicted him of aggravated manslaughter,<sup>476</sup> and the judge sentenced him to twenty years in prison.<sup>477</sup> He was released five years later after his girlfriend was found guilty of the murder.<sup>478</sup> Laverne Pavlinac confessed falsely to capital murder to Oregon State Police in 1991, was convicted by a jury, and sentenced to life in prison; five years later Pavlinac was released from prison after the true killer came forward and confessed to the crime.<sup>479</sup>

*b. Convicted and Never Officially Exonerated*

Some false confessors are not as fortunate as Cox, Linscott, Purvis, Parker, Reynolds, and Pavlinac—all of whom were eventually released and exonerated of their wrongful convictions. Some innocent individuals who confess falsely are convicted by juries and never released from prison. For example, Earl Washington, a mentally retarded adult who confessed to rape and capital murder, was convicted by a jury and sentenced to death.<sup>480</sup> Washington spent ten years on Death Row before Virginia's Governor commuted his sentence to life imprisonment.<sup>481</sup> The governor refused to pardon Washington even though a DNA test cleared him of the crimes.<sup>482</sup> Martin Tankleff,<sup>483</sup> Richard Lapointe<sup>484</sup> and Jessie Misskelley, Jr.<sup>485</sup> were also convicted by juries and sentenced to life imprisonment solely on the basis of confessions that were badly flawed, failed to be cor-

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on nothing other than his false confession, they might have continued the search for the killer and caught Hatcher before he killed James Churchill and Michelle Steele.

<sup>474</sup> *Id.* at 141-201.

<sup>475</sup> *State v. Parker*, No. A-453-83T4 (N.J. Super. Ct. App. Div. Feb. 4, 1986). *See also* Nathan, *supra* note 62, at 1.

<sup>476</sup> Bedau & Radelet, *supra* note 3, at 150.

<sup>477</sup> Nathan, *supra* note 62, at 1.

<sup>478</sup> *Id.*

<sup>479</sup> Seigel, *A Question of Guilt*, *supra* note 4, at 15.

<sup>480</sup> White, *supra* note 3, at 121-22. *See also* Hourihan, *supra* note 4, at 1471.

<sup>481</sup> White, *supra* note 3, at 122.

<sup>482</sup> *Id.* Washington was barred by Virginia state law from attacking his conviction on the basis of the DNA evidence because it did not meet the strict requirements of after-discovered evidence. In Virginia a convicted criminal has only 21 days after the entry of a final order to move to set aside a verdict. *See id.* at 122 n.155 (citing VA. SUP. CT. R. 3A:15(b)).

<sup>483</sup> *See supra* text accompanying notes 212-26.

<sup>484</sup> *See supra* text accompanying notes 227-45.

<sup>485</sup> *See supra* text accompanying notes 246-54.

roborated and were surrounded by case evidence that weighed strongly in favor of their innocence.

Like LaPointe, Misskelley, Tankleff, and Washington, there are many individuals who were induced to confess falsely, and in the absence of any other evidence, are convicted by a jury and sentenced to long prison terms. Other false confessors, however, serve their sentences but are never exonerated. Bradley Page was convicted of involuntary manslaughter after two trials and sentenced to six years in state prison.<sup>486</sup> Although new evidence identified an already convicted serial murderer as the true killer, the Alameda County, California District Attorney's Office refused to acknowledge that Page (whose record was spotless and whose life had been exemplary) was innocent and refused to reopen the case.<sup>487</sup> James Harry Reyos confessed to a murder and was sentenced to thirty-eight years and served twelve years in prison, even though the appellate prosecutor conceded that it was physically impossible for Reyos to have committed the crime.<sup>488</sup> Though he was released, Reyos was never exonerated.

In 1973, Phoenix, Arizona police extracted from John Knapp a confession to setting the fire to his home that killed his two small children.<sup>489</sup> There was no inculpatory evidence supporting the confession<sup>490</sup> and considerable exculpatory evidence supporting Knapp's innocence.<sup>491</sup> The first jury hung, but a second jury convicted him of capital murder, and he was sentenced to death.<sup>492</sup> Five times warrants were issued for his execution, and once he came within forty hours of being sent to the gas chamber.<sup>493</sup> Years later an appellate judge vacated Knapp's capital conviction because the prosecutor had withheld exculpatory scientific evidence indicating that one of his children had set the fire.<sup>494</sup> In Knapp's third trial, the jury hung again.<sup>495</sup> Finally,

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<sup>486</sup> See *supra* text accompanying notes 181-203.

<sup>487</sup> *Id.*

<sup>488</sup> See *supra* text accompanying notes 145-49.

<sup>489</sup> PARLOFF, *supra* note 4, at 33-41.

<sup>490</sup> *Id.* at 71 ("Although Knapp had confessed, every detail of the confession was improbable").

<sup>491</sup> See *id.* at 95-104, 116, 130, 140, 270, 280-81, 286, 326-27, 331-32, 393.

<sup>492</sup> *Id.* at 137, 152, 137, 154.

<sup>493</sup> *Id.* at 186, 164.

<sup>494</sup> *Id.* at 234. See also Radelet et al., *supra* note 4, at 947.

<sup>495</sup> PARLOFF, *supra* note 4, at 393.

after Knapp spent more than twelve years on death row and fourteen and a half years in maximum security incarceration,<sup>496</sup> the state offered to forego a fourth prosecution if Knapp pled no contest to second degree murder in exchange for time served,<sup>497</sup> thereby allowing the state to score the Knapp prosecution as a conviction. Immediately after accepting the offer Knapp was released from prison.<sup>498</sup>

In 1979, Norfolk, Virginia police extracted five contradictory confessions<sup>499</sup> from Joseph Giarratano to the rape and murder of fifteen-year-old Michelle Kline and her forty-four-year-old mother, Toni Kline.<sup>500</sup> Sperm, hair samples,<sup>501</sup> and bloody shoeprints<sup>502</sup> found at the crime scene did not link Giarratano to the crime.<sup>503</sup> In addition, Giarratano's confessions were demonstrably inaccurate on significant points: One of the victims died from a severed artery and bled profusely, but police found no blood on Giarratano's clothing;<sup>504</sup> the victims were strangled and stabbed by someone who is right-handed, but Giarratano is left-handed<sup>505</sup> and has only limited use of his right hand due to neurological damage from childhood; Giarratano confessed to strangling one of his victims with his hands, but an independent pathologist testified that the hallmarks of manual strangulation

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<sup>496</sup> *Id.* at 395.

<sup>497</sup> *Id.* at 402.

<sup>498</sup> *Id.*

<sup>499</sup> Stephen Hooker, *The Killing of Joe Giarratano; Death Row Inmate May Not Have Committed Murders He Confessed To*, THE NATION, Oct. 29, 1990, at 485 ("The five confessions are confused and contradictory, both internally and with one another, and are wildly inconsistent in such fundamental matters as the motive and the date and order of killings.").

<sup>500</sup> Arney, *supra* note 4, at A1. The autopsy report was changed after Giarratano's confession to corroborate it. Colman McCarthy, *More Than A Reasonable Doubt*, WASH. POST, Feb. 16, 1991, at A27.

<sup>501</sup> Pamela Overstreet, *Rally Scheduled on Behalf of Condemned Killer*, U.P.I. REGIONAL NEWS, Feb. 7, 1991, at 1.

<sup>502</sup> Arney, *supra* note 4, at A1. Although the blood spot on Giarratano's boots matched Michelle Kline's blood, she died of asphyxiation and thus only bled internally. Jim Clardy, *Reasonable Doubt? New Trial Sought for Death Row Prisoner*, WASH. TIMES, May 24, 1990, at A1.

<sup>503</sup> In addition, 21 distinct fingerprints were found at the crime scene, but only one belonged to Giarratano, and it was found in an area that was unconnected to the crime. Arney, *supra* note 4, at A1.

<sup>504</sup> Clardy, *supra* note 502, at A1. The arresting officer submitted a sworn affidavit stating that Giarratano had no blood, scratches or bruises on him. Hooker, *supra* note 499, at 485.

<sup>505</sup> David Kaplan & Bob Cohn, *Pardon Me, Governor Wilder*, NEWSWEEK, Mar. 4, 1991, at 56.



were not present;<sup>506</sup> Giarratano stated that he threw the knife he used into the Kline's backyard, but no weapon was ever found.<sup>507</sup> Regardless, Giarratano was convicted of capital murder and sentenced to die.<sup>508</sup> On death row for more than a decade,<sup>509</sup> Giarratano has twice come within forty-eight hours of being executed.<sup>510</sup> Granted conditional clemency in 1991, Giarratano is currently serving a life term.<sup>511</sup>

In Waukegan, Illinois in 1993, Juan Rivera, a mentally handicapped twenty-year-old,<sup>512</sup> underwent approximately thirty-three hours<sup>513</sup> of unrecorded interrogation over four days,<sup>514</sup> and signed two police-written confession statements admitting that he raped, stabbed and murdered eleven-year-old Holly Staker.<sup>515</sup> The confessions contained the types of corrections of spelling and grammatical errors<sup>516</sup> that interrogators are trained to work

<sup>506</sup> Hooker, *supra* note 499, at 485.

<sup>507</sup> John Harris, *A Widely Watched Date with Death: Virginia Inmate's Plea for Clemency Draws National Attention*, WASH. POST, Feb. 17, 1991, at A1.

<sup>508</sup> Arney, *supra* note 4, at A1.

<sup>509</sup> Harris, *supra* note 507, at A1. Giarratano was convicted of capital murder and sentenced to die in 1979; he was not released from death row until 1991. Arney, *supra* note 4, at A1.

<sup>510</sup> In 1980, Giarratano came within 37 hours of being executed. See Phil McCombs, *A Long Road Defers the Death Penalty*, WASH. POST, June 13, 1982, at A1. In 1981, Giarratano came within 24 hours of being executed. See Harris, *supra* note 507, at A1.

<sup>511</sup> Arney, *supra* note 4, at A1.

<sup>512</sup> Andrew Martin, *Staker Suspect: I Never Touched That Girl*, CHI. TRIB., Apr. 9, 1993, at 1. See also Martin & Parsons, *supra* note 114, at 1.

<sup>513</sup> Eric Zorn, *Answer to Justice May be in Videos*, CHI. TRIB., Nov. 23, 1993, available in 1993 WL 11127007.

<sup>514</sup> Andrew Martin, *Rivera Disoriented After Confession, Nurse Says*, CHI. TRIB., Nov. 18, 1993, at 1; see also Zorn, *supra* note 513.

<sup>515</sup> Zorn, *supra* note 513. During his four day interrogation but prior to signing two police-written confessions, Rivera began to hyperventilate and bang his head against the cell wall so violently that he was medicated and his arms and legs were shackled. See Andrew Martin, *Interrogation of Coercion?: An Issue of Debate in Staker Slaying Case*, CHI. TRIB., Mar. 26, 1993, at 2; Martin, *supra* note 512, at 1. Defense attorneys asserted that Rivera signed the confessions only after suffering an interrogation-induced mental breakdown; Rivera claimed that he lost consciousness during the interrogation ordeal and did not remember signing the confessions. See Martin, *supra* note 512, at 2; see also Robert Enstad, *Rivera Testifies He Can't Recall His Confession*, CHI. TRIB., Apr. 6, 1993, at 1; Andrew Martin & James Hill, *New Man Linked to Staker Murder*, CHI. TRIB., Feb. 25, 1993, at 1. At Rivera's trial, a former nurse at the Lake County Jail testified that Rivera was so "dazed and incoherent" an hour before he allegedly confessed that she recommended he be placed on suicide watch. Martin, *supra* note 514, at 1. The jail nurse's testimony contradicted police investigators' earlier and repeated testimony that Rivera was "alert, cooperative and friendly" while confessing to the brutal murder and signing both police-written statements. *Id.*

<sup>516</sup> Martin & Parsons, *supra* note 114, at 1.

into written confessions to demonstrate that the suspect reviewed the statement before signing it.<sup>517</sup> However, it would have been difficult, if not impossible, for Rivera to have actually detected these errors since he reads at a third grade level.<sup>518</sup> The veracity of Rivera's confession was further undermined by the fact that he was wearing an electronic leg monitor that showed he was at home the night of the crime,<sup>519</sup> and that none of the 350 pieces of physical evidence linked Rivera to the crime.<sup>520</sup> DNA tests of more than a dozen items from the crime scene failed to match Rivera's blood,<sup>521</sup> semen,<sup>522</sup> fingerprints<sup>523</sup> or hairs.<sup>524</sup> Nevertheless, a jury convicted Rivera of first-degree murder,<sup>525</sup> and a judge sentenced him to life in prison without the possibility of parole.<sup>526</sup> In November, 1996, an Illinois Appellate Court reversed Rivera's conviction.<sup>527</sup> However, Rivera remains incarcerated,<sup>528</sup> and Lake County, Illinois prosecutors will likely seek the death penalty in his retrial.<sup>529</sup>

## V. CONCLUSION

This article has documented that American police continue to elicit false confessions even though the era of third degree interrogation has passed. This study has also demonstrated with field data what Kassin and Wrightsman have established in the laboratory:<sup>530</sup> that confession evidence substantially biases the trier of fact's evaluation of the case in favor of prosecution and

<sup>517</sup> See INBAU ET AL., *supra* note 30, at 185.

<sup>518</sup> Martin & Parsons, *supra* note 114, at 1.

<sup>519</sup> See Andrew Martin & Robert Enstad, *Rivera Confession Coerced, Defense Says*, CHI. TRIB., Feb. 18, 1993, at 8.

<sup>520</sup> See Martin & Parsons, *supra* note 114, at 1.

<sup>521</sup> Brandon & Martin, *supra* note 113, at 1.

<sup>522</sup> *Id.*

<sup>523</sup> Andrew Martin, *Rivera Murder Confession Detailed*, CHI. TRIB., Feb. 23, 1993, at 1.

<sup>524</sup> Sharon Cotliar, *Baby-Sitter Murder Case Hinges on Confessions*, CHI. SUN-TIMES, Nov. 19, 1993, at 12.

<sup>525</sup> Philip Franchine, *No Death Penalty for Baby-Sitter's Killer*, CHI. SUN-TIMES, Nov. 21, 1993, at 6.

<sup>526</sup> Frank Burgos, *Man Sentenced to Life in Baby-Sitter Murder*, CHI. SUN-TIMES, Dec. 22, 1993, at 12.

<sup>527</sup> See *People v. Rivera*, No. 2-94-0075 (Ill. App. Ct. Nov. 19, 1996).

<sup>528</sup> Dennis O'Brien, *\$3 Million Bond Set in Murder Retrial*, CHI. TRIB., June 26, 1997, at 3.

<sup>529</sup> Andrew Buchanon, *Death Penalty May Be Sought During Retrial; Jury Had Spared Babysitter's Killer*, CHI. TRIB., Sept. 16, 1997, at 1.

<sup>530</sup> See Kassin & Wrightsman, *Coerced Confessions*, *supra* note 2, at 494-98; Kassin & Wrightsman, *Prior Confessions*, *supra* note 2, at 139-40.

conviction, even when the defendant's uncorroborated confession was elicited by coercive methods and the other case evidence strongly supports his innocence.<sup>531</sup> With near certainty, false confessions lead to unjust deprivations of liberty. Often they also result in wrongful conviction and incarceration, sometimes even execution.

For those concerned with the proper administration of justice, the important issue is no longer whether contemporary interrogation methods cause innocent suspects to confess. Nor is it to speculate about the rate of police-induced false confession or the annual number of wrongful convictions they cause.<sup>532</sup> Rather, the important question is: *How can such errors be prevented?* If police and prosecutors wish to prevent wrongful deprivations of liberty and miscarriages of justice, they must acknowledge the reality of false confessions, seek to understand their causes and consequences, and work to implement policies that will both reduce the likelihood of eliciting false confessions and increase the likelihood of detecting them.

The sixty false confessions described in this article dispel the myth promoted by interrogation manual authors and police trainers that the psychological interrogation methods they advocate do not cause suspects to confess to crimes they did not commit.<sup>533</sup> In fact, the opposite is true. Our analysis almost always reveals evidence of shoddy police practice and/or police criminality. Shoddy police practice derives in large part from poor interrogation training. Influential manuals such as *Criminal Interrogation and Confessions*<sup>534</sup> and *Practical Aspects of Interview and Interrogation*<sup>535</sup> teach police to use tactics that have been shown to be coercive and to produce false confessions.<sup>536</sup> Such

<sup>531</sup> For a review, see Kassir, *supra* note 4.

<sup>532</sup> See Richard A. Leo & Richard Ofshe, *Missing the Forrest for the Trees: A Response to Paul Cassell's "Balanced Approach" to the False Confession Problem*, 74 DENV. L. REV. 1135 (1997).

<sup>533</sup> See, e.g., INBAU ET AL., *supra* note 30, at 147; Jayne & Buckley, *supra* note 30, at 66; The Reid Technique, *supra* note 30; Reid Specialized Interrogation, *supra* note 30.

<sup>534</sup> INBAU ET AL., *supra* note 30, at 102-06.

<sup>535</sup> ZULAWSKI & WICKLANDER, *supra* note 30.

<sup>536</sup> One outstanding example of poor police practice—which contributed to many of the false confessions discussed in this article—is the use of the *accident scenario* technique (also known as maximization/minimization). See Ofshe & Leo, *The Decision to Confess Falsely*, *supra* note 4, at 1088-106. Due to information presented in training manuals, some police interrogators believe that it is legally permissible to offer to accept a suspect's admission to a less serious or non-existent crime, such as an accident

texts also mislead interrogators into believing that a suspect's guilt can be inferred on the basis of pseudoscientific claims about the meaning of demeanor and behavior analysis, and they fail to educate police about the social psychology, variety and distinguishing characteristics of interrogation-induced false confessions.<sup>537</sup>

Police criminality (e.g., coercing false witness statements, suborning perjured testimony from snitches, perjury at suppression hearings or at trial and/or obstruction of justice by withholding exculpatory evidence) often stems from ill-conceived efforts to save prosecutions that never should have commenced. The blood sport attitude that often develops in high profile criminal prosecutions—"get the guilty party no matter what"—sometimes causes significant harm to innocent individuals who police and prosecutors have identified as guilty solely because they were coerced or persuaded to make a false confession. During the investigation and prosecution of every wrongful conviction documented in this article, police and prosecutors should have realized that the confession was almost certainly, if not demonstrably, false.

The American criminal justice system has not yet developed adequate safeguards to prevent police-induced false confessions from leading to the wrongful deprivation of liberty and conviction of the innocent. False confessions threaten the quality of criminal justice in America by inflicting significant and unnecessary harms on the innocent. In 52% of the cases reported here, the false confessor suffered, *at a minimum*, unjust and needless pre-trial deprivations of liberty.<sup>538</sup> For these defendants, the safeguards built into the criminal justice system limited the false confessor's harms to pre-trial incarceration, the cost of defending their innocence, and the damage to their careers and reputations. Forty-eight percent of the false confes-

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or self-defense account of what happened. *Id.* This offer gives the suspect an "out"—a way to comply with the interrogator's demand for an admission of involvement in the offense while minimizing criminal liability by changing the facts of the crime. *Id.*; see INBAU ET AL., *supra* note 30, at 102-06.

<sup>537</sup> Leo, Police Interrogation in America, *supra* note 10, at 67-127; see also *supra* note 30 and accompanying text.

<sup>538</sup> See *supra* Part IV.B.1. In one false confession case not discussed in this paper, the defendant spent nearly four and one-half years in pre-trial incarceration before the confession was suppressed and he was released. See *State v. Louis*, No. 92-348-C, 92-303-C (Desoto County Ct. 1992).

sion cases studied resulted in a miscarriage of justice.<sup>539</sup> In these prosecutions, the safeguards built into the criminal justice system failed to prevent lengthy incarceration, years of imprisonment on death row and in one case a wrongful execution.

False confessions are likely to lead to unjust deprivations of liberty and miscarriages of justice because criminal justice officials and lay jurors treat confession evidence with such deference that it outweighs strong evidence of a defendant's innocence. It bears emphasizing that in none of the disputed confessions documented in this article was there any reliable evidence corroborating the defendant's confession, and in most of these cases there was compelling, if not overwhelming, evidence establishing his innocence. Nevertheless, criminal justice officials treated these confession statements as the most probative evidence of the defendant's guilt and permitted the "I did it" statement to override evidence of his innocence. Absent the uncorroborated and unreliable statement, none of these individuals would likely have been arrested, charged, convicted, incarcerated, or executed.

The risk of harm caused by false confessions could be greatly reduced if police were required to video- or audio-record the entirety of their interrogations. Presently, only Alaska<sup>540</sup> and Minnesota<sup>541</sup> require recording custodial interrogations.<sup>542</sup> The practice of recording creates an objective and exact record of the interrogation process that all parties—police, prosecutors, defense attorneys, judges, juries—can *review* at any time. The existence of an exact record of the interrogation is crucial for determining the voluntariness and reliability of any confession statement, especially if the confession is internally inconsistent, is contradicted by some of the case facts, or was elicited by coercive methods or from highly suggestible individuals.

Taping also allows third parties to resolve the courtroom "swearing contests" that arise when the suspect and the police

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<sup>539</sup> See *supra* Part IV.B.2.

<sup>540</sup> See *Stephan v. State*, 711 P.2d 1156, 1159 (Alaska 1985). In Alaska, a defendant has a fundamental right to have his interrogation recorded and police failure to record is considered a violation of state due process. See *id.*

<sup>541</sup> See *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994).

<sup>542</sup> However, many police agencies choose on their own to record interrogations in felony cases. See generally WILLIAM GELLER, U.S. DEP'T OF JUSTICE, POLICE VIDEOTAPING OF SUSPECT INTERROGATIONS AND CONFESSIONS: A PRELIMINARY EXAMINATION OF ISSUES AND PRACTICES—REPORT TO THE NATIONAL INSTITUTE OF JUSTICE (1992).

offer conflicting testimony about what occurred during interrogation. In disputed confession cases the discrepancies between police officers' and defendants' accounts clearly indicate that one of the parties is either lying or mistaken. Of course, interrogators are sometimes falsely accused of deviant conduct. In the usual case, however, the police officer's testimony is treated as far more credible than the citizen's, whose reputability is compromised by his status as a criminal defendant.<sup>543</sup> In many of the cases documented in this article, however, the interrogator claimed that the confessor supplied information that only the perpetrator could have known—only to have the suspect subsequently proven innocent and his ignorance of the crime facts revealed. To more accurately resolve whether the interrogator used coercion, whether the suspect knew the facts of the crime, and/or whether he was made to confess falsely, one conclusion is inescapable: *interrogations must be recorded in their entirety.*

The cases discussed above also illustrate the compelling need for police, prosecutors, judges and juries to carefully scrutinize and evaluate a suspect's post-admission narrative against the known facts of the crime. Confessions should be evaluated on the basis of the quality of the post-admission narratives they produce, and police should be trained to recognize that it is this information—not the words "I did it"—that discriminates between the innocent and the guilty. In investigations in which hard evidence linking a person to a crime is missing, only the analysis of the suspect's post-admission narrative provides a basis for objectively assessing his personal knowledge of a crime (assuming contamination is eliminated). In each of the recorded false confessions studied here, the account the suspect offered after saying the words "I did it" was significantly at odds with the crime facts and indicated that the suspect was ignorant of information the true perpetrator would have known.

When police are trained to seek both independent evidence of a suspect's guilt and internal corroboration for every confession before making an arrest; when state's attorneys demand that "I did it" statements be corroborated by the details of a suspect's post-admission narrative before undertaking a prosecu-

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<sup>543</sup> See generally YALE KAMISAR, POLICE INTERROGATION AND CONFESSIONS: ESSAYS IN LAW AND POLICY (1980).



tion; when courts insist on a minimal indicia of reliability before admitting confession statements into evidence; and when legislators mandate the recording of interrogations in their entirety, the damage wrought and the lives ruined by the misuse of psychological interrogation methods will be significantly reduced. The sixty cases discussed in this article illustrate that when there is no independent evidence against a defendant and only a factually inaccurate confession, the risk of justice miscarrying is so great that the case should never be allowed to proceed to trial.